REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2019/44093

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES:NO
(3) REVISED: NO

DATE 17/02/2025 SIGNATURE

In the matter between:

AADIL MANGERA obo ZAHEER MANGERA PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

NGENO, AJ

[1] Plaintiff sues herein in his capacity as the father and natural guardian of Zaheer Mangera(the minor child). At the time of the accident, the minor child was staying with the Plaintiff and his wife and still stays with them to date.

[2] The minor child sustained injuries in a motor vehicle accident that occurred on 29 September 2017 between Kestrel and Flamingo Streets, Mackenzie Park,

Benoni. He was a passenger at the time of the accident, seated at the back seat when the insured driver lost control of the motor vehicle bearing registration numbers 786 MKI GP and causing it to overturn. At the time of the collision, he was 10 years old and doing Grade4 at Progress Primary school.

[3] As a result of the collision, the minor child was admitted to Sunshine and Glynwood hospitals for treatment of the injuries. He was diagnosed to have suffered the following injuries:

3.1 A mild traumatic brain with direct trauma to the craniofacial structures causing multiple facial bone structures and loss of consciousness at scene;
3.2 Loss of the lower teeth jaw;
3.3 Disfigurement on his face including lacerations to both lips, nose, mandible and right eye (which has resulted in poor vision including blurry vision);
3.4 Severe facial lacerations involving the right alar nasi, the bridge of the nose and the right lower eyelid;
3.5 A fracture of the nose extending into the ethmoid, maxillary and frontal sinuses;
3.6 Frontal pneumocephalus;
3.7 Bilateral fractures of the mandible;
3.8 Laceration of the occipital scalp;
3.9 Soft tissue injury to the cervical spine;
3.10 Soft tissue injury to the lumbar spine;
3.11 Soft tissue injury to the chest and ribs;
3.12 Soft tissue injury to the right radius;
3.13 Soft tissue injury to the left tibia;
3.14 Soft tissue injury to the left cuff; and
3.15 Soft tissue injury to the right pelvis.

[4] Even though the defendant had initially raised two special pleas of *locus standi* of the plaintiff to institute the claim on behalf of the minor child and jurisdiction owing to failure to submit serious injury report filled by the medical practitioner, after the filing of the replication to the plea and on 13 June 2024, the defendant

made an offer on general damages on the basis that it would pay plaintiff an amount of R1 300 000.00. The defendant also offered to provide the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act[1] for payment of future medical and related expenses. The defendant's offer was accepted by the plaintiff on 09 July 2024.

[5] The parties have agreed that the settlement agreement relating to the offer of general damages and future medical expenses may be made an order of court upon determination of the outstanding issues. This agreement is recorded in paragraph 3 of the pre-trial minute dated 25 October 2025.

[6] In paragraph 4 of the pre-trial minute of 25 October 2024, the parties have recorded that the defendant has admitted the injuries mentioned in paragraph 3 of this judgment.

[7] There are two remaining issues that must still be determined by the court. They relate to the liability regarding the loss of earning capacity and past medical expenses.

[8] The plaintiff appointed various experts which include an Orthopaedic Surgeon, Occupational Therapist, Educational and Clinical Psychologist, Clinical and Neuropsychologist, Neurosurgeon, Plastic and Reconstruction surgeon and Industrial Psychologist. Some of the findings of these experts will be discussed below.

[9] The defendant did not appoint expert witnesses even though it was ordered in terms of the court order dated 14 March 2022 to make an election within 5 days of the service of the order whether it will be appointing its own experts or relying on such findings of the plaintiff's experts. The defendant failed to make an election as ordered by the court.

[1] 56 of 1996.

[10] The defendant also did not call witnesses to testify on its behalf. In its plea, the defendant did not offer a version. It also does not dispute the evidence contained in plaintiff's expert reports.

[11] At the commencement of the trial, the plaintiff made an application in terms of rule 38(2) of the Uniform rules for the factual evidence and findings contained in the reports of his appointed experts to be admitted into evidence. I granted the application.

[12] For actuarial calculations, plaintiff relies on the report prepared by Johan Potgieter of GRS Actuarial Consulting. The report was duly served on the defendant timeously.

Neuro surgeon

[13] According to Dr Segwapa, the plaintiff's Neurosurgeon, the minor sustained a head injury, facial lacerations, multiple facial fractures and soft tissue injury to the thoracic spine. On arrival at the hospital his GCS was 13/15. Dr Segwapa reports that the minor child sustained a mild traumatic brain injury. The injuries as contained in the Neurosurgeon's findings, are consistent with the hospital records.

[14] He reports that on examination, the minor child presented a 4 cm scar on the glabella and nasal bridge, 2,5 cm scar on the nose and abrasion scars on the occiput. The minor child had no difficulty in concentration and had paid attention well during the interview and sustained it throughout.

[15] The sequelae of the injury include suffering chronic pains to date and post-concussion headaches. There is a risk that the minor child may develop epilepsy. The minor child will require future medical treatment to manage the headaches and thoracic spine disease.

Clinical Psychologist

[16] In his report, Mr C Sampson states that the minor child has neurocognitive deficits in multiple domains tested and depressive symptoms. The identified cognitive deficits have negatively impacted the minor child's scholastic functioning and there is a likelihood that this condition will continue as he progresses to higher grades.

[17] The facial disfigurement impairs his self-esteem and probably contributes to the symptoms of depression and behavioural difficulties.

[18] On neuropsychological assessment, he was found to have widespread impairment across various domains of cognitive functioning which include but not limited to mild impairment in concentration and mental tracking ability, visuomotor tracking, visual selective attention, recall of visual information, verbal concept formation and abstract reasoning.

Educational Psychologist

[19] The plaintiff also appointed an Education Psychologist Rosalind Macnab to assess and determine the minor child's pre- and post-accident educational potential and investigate the impact of the injuries sustained by the minor child on his education performance and potential leading to employment prospects.

[20] According to the Educational Psychologist, the minor child was probably a high average learner prior to the accident and would have probably coped adequately with the requirements of a mainstream school up to grade 12 with the probability of attaining post matric studies such as the degree(NQF7) and the possibility of attaining a post graduate qualification.

[21] He performed very well at school before the accident with his marks ranging from 70 to 90% for Grade 1, falling within 80% for Grade 2 term 1 and 2. In Grade 3 there was a slight decline in his performance as he obtained an average of 73% for Term1, 63% for Term 2, 57% for Term 3 and 62% for Term 4. In Grade 4 there

was a slight decline in his performance as he obtained 61% for Term 1 and 55% for Term 2 and Term 3.

[22] In terms of the post-accident cognitive skills and capabilities, the minor child experiences difficulties with comprehension as he struggles to understand what he is reading or comprehend the content of what he is taught. He has poor memory and has difficulties remembering the work that he is taught.

[23] His post-accident intellectual functioning falls within the impaired range rendering him severely cognitively challenged. His academic profile revealed severe difficulties in all learning areas. His school profile is likely to deteriorate further as the higher grades place greater demands in terms of workload and abstract content.

[24] As a result, the Educational Psychologist has concluded that the minor child will not be in a position to realise his pre-morbid potential. She finds that the minor child is not coping with the requirements of a mainstream school and recommends that he must be placed and educated in a special needs (LSEN) school. She concludes that the minor will be unable to complete Grade 12.

Occupational Therapist

[25] Plaintiff also appointed an Occupational Therapist Caryn Bekker to comment on the effect of the injuries on functional ability and to discuss additional assistance, special and adapted equipment and adaptations needed.

[26] According to the Occupational Therapist, his parents reported that he requires assistance with self-care (washing and dressing) as well as other daily living activities during his recovery period.

[27] On functional difficulties related to the injuries, the severe scarring on his face has caused him to become less confident due to his appearance. He experiences difficulty in applying himself during scholastic tasks and finds it challenging to retain information that he is taught at school.

[28] On residual vocational capacity, it is clear that he experiences physical limitations and restrictions. He is currently suited to load handling of up to medium work. He has not reached his full level of maturity and therefore for his true physical vocational potential as an adult to be ascertained, he should be assessed once he has reached full maturity.

[29] According to the Occupational Therapist, the impact of neuropsychological and cognitive impairments will result in significant limitations in his career or employment capacity. He is likely to be suited to supported or sheltered employment if the problems mentioned above persist into adulthood.

Industrial Psychologist

[30] The Industrial Psychologist, Dr Gulshan Sugreen was instructed to evaluate the effects of the accident and its sequelae on the minor child's future employment prospects. The prospects are evaluated with regards to pre- and post-accident career prospects considering the evidence and findings of the Neurosurgeon, Clinical Psychologist, Educational Psychologist, Orthopaedic surgeon, Occupational Therapist and Plastic surgeon.

Pre-accident potential

[31] The minor child was 10 years old at the time of the accident and doing Grade 4. Having considered findings of other expert witnesses, the Industrial Psychologist is of the view that the minor would probably have entered the labour market with a degree on NQF level 7 and possibly with an Honours degree at NQF level 8 but for the accident.

[32] With the probability of a degree, the minor child would have entered the labour market at an entry level between R166000- R303000.00 per annum depending on his filed of studies. With experience and further development at around the median, there is a probability that he wold have earned between R421000 and R759000.00. By late career, the he would have been at salary range between R535000.00 to R1012000.00.

[33] With the possibility of an Honours Degree, at entry level he would have been between R216000.00 and R363000.00. With experience and further development he would have moved to an annual salary range between R476000.000 and R874000.00 at around the median. By late career, he would have been at a salary range between R597000.00 and R1 140000.00.

Post-morbid potential

[34] In view of the fact that the minor child is not coping with the requirements of a mainstream school, the Educational Psychologist recommended that he should be placed and educated at a TVET college. Given his post-morbid profile, he will not be able to matriculate.

[35] His entry level earnings per annum would range between R56000.00 and R71000.00 depending on the field of studies. With anticipated income growth that comes with experience and further development, he would move to a salary range between R94000.00 and R162000.00 at around median. By late career between the ages of 45 to 55 he would have moved to a salary range between R118000.00 and R162000.00.

[36] Considering his post-accident potential and given his educational, neuropsychological, psychological and psychosocial, physical in addition to the disfigurement he has suffered, his employment options are considered limited. His prospects of securing full time meaningful income generation in the formal sector is considered to be limited.

[37] In the event he is able to secure full time employment, given his impairments and how these manifest in a work environment, he may not able to sustain such employment.

General approach on loss of earning capacity

[38] Generally in personal injury claims it is accepted that loss of earning capacity is a patrimonial damage because it results in the diminution of value of the injured

person's estate as a result of the delict committed. Patrimonial damage is determined by comparing a person's estate before the delict to the situation and immediately after the delict.

[39] It is trite that the court enjoys a general discretion on the amount it should award for damages. Such discretion must be exercised judiciously and not arbitrarily. In exercising its discretion, the court must be guided by what is fair and just in the circumstances of a particular case.

[40] The purpose of awarding damages is to place the plaintiff to the fullest possible extent in the same position he was or would have been but for the accident. It is not to put him in any lesser or better position. The objective is to compensate the plaintiff for his loss and not to punish the defendant. In fact, when considering a fair and reasonable amount, the court must regard the defendant with greater favour than the plaintiff. This balancing act may be achieved only by taking into account all relevant contingency deductions which include the possibility of employment in the formal sector.

[41] The approach of assessing damages for loss of earning capacity is not an easy exercise because it involves a fair amount of guesswork. This means that certain assumptions will have to be made. In determining a fair and reasonable amount, the court must make a comparison between the position of the claimant before and after the accident. In Southern Insurance Association Ltd v Bailey No[2] the court said the following:

> "Any enquiry into damages for the loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs, or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. It has open to two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions

[2] Southern Insurance Association Ltd v Bailey 1984(1) SA 98(A)

resting on the evidence. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non-possums attitude and make no award".

[42] In the Southern Insurance matter at paragraph 113 it was stated that the courts ought to favour the mathematical calculations which are in the form of actuarial calculations as they are a logical attempt to quantify the loss. This is so, the court reasoned, because the trial Judge's gut feeling as to what is fair and reasonable is nothing more than a blind guess.

[43] Contingencies are a factor that the court needs to take into account when assessing damages for loss of earning capacity because there are generally no certainties in life. Contingencies are normal consequences and circumstances of life which would affect the amount of money the plaintiff would have earned. Contingencies are entirely at the discretion of the court and are dictated to by the circumstances of a particular case.

[44] The general approach adopted in similar matters has always been that contingency deductions are not prescriptive, and are a mere suggestion, since they are a prerogative of the courts. It has become customary for courts to apply the so-called sliding scale to contingencies which entails a half percent for year to retirement age that is 25% for a child, 20% for a youth and 10% in the middle age.[3]

Analysis and application of law to the facts

[45] The issue of whether or not plaintiff in his capacity as aforesaid has a claim for loss of earning capacity is not in dispute. What remains is the determination of a

[3] Goodall v President Insurance Company Ltd 1978 (1) SA 389 (W).

fair and reasonable compensation having regard to the findings of the experts and actuarial calculations.

[46] It is also not in dispute that as a result of the accident, the minor child sustained head injury, facial lacerations, multiple facial fractures and soft tissue injury to the thoracic spine. This is so because the parties have agreed to these injuries as common cause as recorded in the joint pre-trial minute of 25 October 2024.

[47] The court accepts that the effect of the injuries has presented the minor child with severe facial scarring and deformity which has changed his appearance dramatically. The court was favoured with photos taken before and after the accident and a comparison was made.

[48] The minor child was in Grade 4 at the time of the accident and had already completed Term 3. The minor child did not return to school to do Term 4 after the accident. There is also no dispute that prior to the accident the intellectual functioning was intact. The accident has caused it to fall within the impaired range with the result that the minor child is not coping with the requirements of a mainstream school and hence the recommendation that he must be placed and educated in a special needs (LSEN) school.

[49] I have also taken note of the fact that before the accident, there was a decline in the minor child's academic performance. This will be a factor that will be considered when the court determines the contingencies to be applied on pre-morbid. The court was also not provided with the copy of Grade 11 report. The defendant's counsel submitted that contingencies on post morbid should be decreased because of this factor.

[50] The minor child continues to experience headaches approximately twice a week and this is often triggered when he spends time in the sun, when he is stressed or anxious about the school work and also when he attempts to concentrate for a long time.

[51] On the evidence that has been presented I have no difficulty in accepting that the minor child experiences residual physical limitations which are as a result of the injuries sustained.

[52] I also have no difficulty in accepting the evidence from all the experts appointed by the plaintiff. I also have no difficulty in accepting the plaintiff's evidence as it was uncontested.

[53] Defendant's counsel also argued that when dealing with a minor child, a higher than normal contingency should be applied. He submitted that I should apply 25% for pre morbid. For this submission he referred me to the case of Road Accident Fund v Guedes 2006(5) SA 583 SCA.

[54] On the conspectus of all the evidence as contained in the experts' reports, I come to the conclusion that the accident has had a serious impact on the earning capacity of the minor child and must be compensated accordingly.

[55] With regard to the post morbid employment, I have had regard to the Industrial Psychologist report which state that the minor child will benefit from placement in a TVET college that will provide him with the education and practical skills and training necessary to take up a specific trade. The placement will equip the minor child with knowledge and practical skills. Defendant's counsel also submitted that the minor child will benefit from a TVET college for a streamlined career.

[56] Notably, the Industrial Psychologist does not make a provision for a possibility of the minor child being self-employed. All the postulations are based on potential for employment in the formal sector.

[57] Accordingly, there is no postulation on the possibility that once he is equipped with knowledge and practical skills by the TVET college, it is likely that he may establish his own business once he qualifies for a specific trade. This information is important for the court to take account of in determining a just fair compensation. The effect thereof will be that this possibility would have an effect on the contingency that the court will have to apply. In applying what it deems to be the appropriate contingency on post morbid, the court will take into account this likelihood.

[58] I have taken note of the fact that, even though the minor child's performance declined after the accident, he has never failed any grade before and after the accident.

[59] Plaintiff's counsel submitted that I should apply the contingency on the probability as opposed to the possibility. The probability is that the minor child should have proceeded to obtain matric and a degree. The possibility is that the minor child could have gone up to Honours' level after the degree. On the basis of the plaintiff's submission, scenario 2 which is based on the minor child obtaining an Honours' degree should fall away. Plaintiff's counsel submitted that in view of the circumstances of the case I should apply 20% contingency on pre-morbid and 35% on post-morbid.

[60] Having in mind that I should confine myself to only scenario 1, according to the actuarial report pre-morbid the minor child would have completed grade 12 in December 2025 and a degree in December 2029. The minor child would have started working on 01 January 2030 earning R234 500.00 per annum. At the age of 40, the minor child would have been earning an amount of R590 000.00 per annum and at the age of 50, the minor child would have been earning an amount of R773 500.00 per annum. All the amounts would increase with inflation.

[61] The actuarial report states that post-morbid, the minor child would have started working on 01 June 2030 and earning an amount of R63500.00 per annum. At the age of 40, the minor child would have been earning an amount of R128 000.00 per annum and at the age of 50, he would have been earning an amount of R167000.00 per annum. All these amounts would increase with inflation.

[62] In both pre- and post-morbid scenarios, the minor child would have worked until the age of 65.

[63] Taking into account that the circumstances of this case and in particular the academic profile of the family and the decline of the minor child's academic performance pre-morbid, I come to the conclusion that the appropriate contingency to be applied on pre-morbid is 25%. The actuarial calculations indicate that the income the minor child would have received pre-morbid would have been R9 214 952.00. Applying the contingency of 25% percent an amount of R2 303 738.00 would have to be deducted. This would leave a net amount of R6 911 214.00.

[64] Regard being had to the fact that the minor child had never failed any grade after the accident despite his limitations and also taking into account that the minor child will benefit from the TVET college and could be self-employed, I come to the conclusion that the appropriate contingency to be applied post-morbid is 30%. The actuarial calculations indicate that post-morbid, the minor child would have earned an income of R2 491 011.00. Applying the contingency of 25% an amount of R747 303.30 would have to be deducted. This would leave a net amount of R1 743 707.70.

[65] Accordingly, I come to the conclusion that plaintiff is entitled to a fair and reasonable compensation for loss of earning capacity in the amount of R5 167 506.30.

Past Medical Expenses

[66] I now turn to deal with the damages relating to past medical expenses. It is common cause that following the accident, plaintiff had received medical treatment. He was admitted at Sunshine hospital and thereafter at Glynwood hospital.

[67] Plaintiff testified personally and stated that some of the medical expenses were paid by the medical aid and some have not yet been paid. Plaintiff was taken through all the vouchers when evidence was led. The total amount that represents all the vouchers is R1 192 248.17.

[68] There is no dispute on the past hospital, medical and ancillary expenses incurred by the plaintiff and/ or medical aid for the minor child. The defendant has agreed to this fact as recorded in paragraph 4.3 of the pre-trial minute of 25 October 2024.

[69] In terms of section 17 of the Road Accident Fund Act, the defendant is liable to compensate claimants for all proven damages including past medical expenses.

[70] There was an issue raised by defendant's counsel that since some of the expenses were settled by the medical aid, plaintiff did not suffer damages and that the principle of subrogation applies.

[71] The issue of medical expenses already paid by the medical aid has been settled in our law. In the matter that came before this division[4], Mbongwe J quoting from *D'Ambrosini v Bane* 2006(5) SA 121 (C), Mbongwe J states the following:

"medical aid scheme benefits which the plaintiff has received, or will receive are not deductible from (sic) in determining his claim for past and future hospital and medical expenses."

[72] In *D'Ambrosini v Bane*[5] matter, the court also reasoned as follows:

"This is a fallacious argument in that it ignores the established fact that, at the time he suffered such injuries, the plaintiff was, and still is, a member of a medical aid scheme, which has, in fact, raised his premiums in return for all embracing cover. He has not received, nor is it envisaged that he will, in future, receive any benevolent or ex gratia payments from such scheme. There is hence no question that any payments made to him by the scheme are in the nature of deductible social insurance benefits. I am in respectful agreement with Gautschi AJ in the Thomson case (par [41] above) that a medical aid scheme, such as that of which the plaintiff is a member, is, in substance a form of insurance. In my view, it is no different from any other form of indemnity insurance which offers cover against injury or damage in return for premium payments."

[73] In *Zysset and Others v Santam Ltd* 1996(1) SA 273 (C) at 277H-279C the court stated the following:

"The modern South African delictual action for damages arising from bodily injury negligently caused is compensatory and not penal. As far as the plaintiff's patrimonial loss is concerned, the liability of the defendant is no more than to make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed...Similarly, and

[4] Discovery Health(Pty) Limited v Road Accident Fund and Another(2022/016179)[2022]ZAGPPHC 768(26 October 2022)

[5] D'Ambrosini v Bane 2006(5) SA 121

notwithstanding the problem of placing a monetary value on a non-patrimonial loss, the object in awarding general damages for pain and suffering and loss of amenities of life is to compensate the plaintiff for his loss. It is not uncommon, however, for a plaintiff by reason of his injuries to receive from a third party some monetary or compensatory benefit to which he would not otherwise have been entitled. Logically and because of the compensatory nature of the action, any advantage or benefit by which the plaintiff's loss is reduced should result in a corresponding reduction in the damages awarded to him. Failure to deduct such a benefit would result in the plaintiff recovering double compensation which, of course, is inconsistent with the fundamental nature of the action.

Notwithstanding the aforegoing, it is well established in our law that certain benefits which a plaintiff may receive are to be left out of the account as being completely collateral. The classic examples are (a) benefits received by the plaintiff under ordinary contract of insurance for which he has paid the premiums and (b) money and other benefits received by a plaintiff from the benevolence of third parties motivated by sympathy. It is said that the law baulks at allowing the wrongdoer to benefit from the plaintiff's own prudence in insuring himself or from a third party's benevolence or compassion in coming to the assistance of the plaintiff."

[74] I am therefore satisfied that the plaintiff has on a balance of probabilities proved that he is entitled to be compensated for past hospital and medical expenses. The claim must therefore succeed.

[75] I now come to the issue of costs. The plaintiff has been successful in his claim against the defendant in all the heads of damages and for that reason the costs should follow the result.

[76] In the result, I make the following order:

76.1 The Defendant is liable for 100% of the Plaintiff's proved or agreed delictual damages arising from the injuries which Zaheer Mangera sustained in the motor vehicle collision which occurred on 29 September 2017.

76.2 The Defendant is directed to pay to Plaintiff the amount of R7 659 754.47 (seven million, six hundred and fifty nine thousand, seven hundred and fifty forty seven cents), and which comprises:-

General Damages	-	R1 300 000.00
Future Loss of Earnings	-	R5 167 506.30
Past Hospital and Medical Expenses	-	R1 192 248.17

76.3 The capital amount in the sum R7 659 754.47 (seven million, six hundred and fifty nine thousand, seven hundred and fifty forty seven cents), shall be paid into the trust account of Plaintiff's attorneys of record, within 180 (one hundred and eighty) days of the date hereof, which details are as follows:-

Name of Account: Wadee & Wadee Attorneys Trust Account
Bank: First National Bank
Branch Code: 250737
Account No: 6206 205 6124

76.4 In the event that the capital amount as aforesaid is not paid in full within 180 *(One Hundred and Eighty)* days of the date of this order as stipulated in paragraph 3 above, then in that event, the Defendant shall be liable for interest on the capital amount or any part thereof, *a tempore mora* from 15 (fifteen) days after the date of this Court Order, to date of final payment.

76.5 The Defendant is directed to furnish the Applicant/Plaintiff, within 14 (fourteen) days of Judgment, with an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, as amended (*"the undertaking"*), to reimburse Zaheer Mangera, for the cost of future accommodation in a hospital or nursing home, or treatment of, or the rendering of a service, or the supplying of goods to him, arising out of the injuries sustained by him in the motor vehicle collision that occurred on 29 September 2017, after such costs have been incurred and upon proof thereof.

76.6 The aforesaid amount of **R7 659 754.47** (*seven million, six hundred and fifty nine thousand, seven hundred and fifty forty seven cents*), shall be kept in the trust account of Wadee & Wadee attorneys, in an interest-bearing account in terms of Section 86(4) and (5) of the Legal Practice Act No 28 of 2014, for the sole benefit of Zaheer Mangera pending the formation of a Trust as referred to below and the opening of a bank account of the Trust.

76.7 The Plaintiff's Attorney Wadee & Wadee Attorneys shall:-

76.7.1. cause a Trust to be established in accordance with the provisions of the Trust Property Control Act, No 57 of 1988 on favour of Zaheer Mangera within six months hereof;

76.7.2. be entitled from the aforesaid capital amount and interest, where applicable, to deduct their fees and/or disbursements for professional services rendered;

76. 7.3. account for any payment/s made from the capital amount and interest applicable thereon.

76.8 The trust instrument, contemplated in paragraph 7 above, shall inter alia make provision for the following:-

76.8.1 Zaheer Mangera to be the sole capital and income beneficiary of the Trust;

76.8.2 The Trust Property to be excluded from any community of property or accrual arising from any valid marriage concluded by Zaheer Mangera;

76.8.3 The sole purpose of the Trust is to administer the estate of Zaheer Mangera in a manner which best takes account of Zaheer Mangera's interests at the relevant times;

76.8.4 The number of Trustees for the purpose of transacting the business of the Trust (save the appointment of the Trustees) shall be three (3) and such number shall not be exceeded or reduced;

76.8.5 The appointment of at least (3) three Trustees of whom at least 1 shall be an independent Trustee who shall be properly qualified to administer the Trust assets, and who should ideally be either a banking institution and/or an accountant or an attorney;

76.8.6 The composition of the Board of Trustees and the structure of the voting rights of the Trustees to be such that:

76.8.6.1. The calling and holding of meetings is specified;

76.8.6.2. The taking of all resolutions is properly regulated and recorded in writing;

76.8.6.3. The Trustees are to attempt to achieve unanimity on all decisions of the Trust;

76.8.6.4. If same is not achieved, an adequate procedure is specified to resolve disputes between the Trustees;

76.8.6.5. A deadlock between the Trustees is avoided;

76.8.6.6. That any procedures to resolve any potential disputes to be referred to the Master of the High Court, subject to the review of any such decision by this Honourable Court;

76.8.6.7. The remaining Trustees are prevented and/or precluded from acting otherwise than to achieve the appointment of a replacement Trustee, in the event of their number being reduced below that prescribed;

76.8.6.8. To act in a tax efficient and cost-effective way at all times including but not limited to making investments and/or recovering their remuneration and/or costs;

76.8.6.9. No charge shall be made by any Trustee in relation to the receipt of the initial payment to the Trust of the proceeds of the litigation.

76.8.7. That any procedures to resolve any potential disputes to be referred to the Master of the High Court, subject to the review of any such decision by this Honourable Court.

76.8.8. The powers of the Trustees to be exercised with specific reference to the circumstances of Zaheer Mangera and such to include but not be limited to:-

76.8.8.1. The right to purchase, sell and mortgage immovable property, invest and reinvest the Trust capital and/or income;

76.8.8.2. Applying the net income of the Trust Fund and if that is not adequate at any time for the purpose, the capital thereof, for the maintenance including, without derogating from the meaning of the term, the maintenance of Zaheer Mangera, his reasonable pleasures, entertainment, general upkeep, educational needs, welfare benefits and rehabilitation and the acquisition or provision of residential facilities or a residence for Zaheer Mangera when he is an adult. The income not used as aforesaid shall accumulate to the capital;

76.8.8.3. The provision of a monthly stipend to the Plaintiff on behalf of Zaheer Mangera alternatively to Zaheer Mangera directly when he becomes an adult after due and proper consideration of his needs, requirements and his ability to manage such funds,

76.8.8.4. The provision for a reasonable annual increase in the above monthly stipend subject to an

annual review of the Plaintiff's alternatively Zaheer Mangera's needs, requirements and ability to manage such funds.

76.8.9. The duty of the Trustees to disclose any personal interest in any transaction involving the Trust property to the Master of the High Court;

76.8.10. The amendment of the Trust instrument subject to the leave of the High Court only;

76.8.11. The termination of the Trust on the death of Zaheer Mangera *alternatively* only with the leave of this Honourable Court;

76.8.12. The right of the Trustees to settle the Plaintiff's Attorneys "attorney and client fee";

76.8.13. The Trustees shall be entitled to call for a taxation of the Plaintiff's Attorney's "attorney and client fee", if deemed necessary;

76.8.14. Subject to the approval of the Master of the High Court, the nomination of the below – mentioned First Trustees whose consents have been obtained:

76.8.14.1. Fatima Parker on behalf of First National Bank Trust Limited - as an Independent Trustee;

76.8.14.2. Zakiah Mangera, in her capacity as mother and natural guardian of Zaheer Mangera and who has identity no: 7701160065088 ; and

76.8.14.3. Khadija Adams Paruk Razack, an adult female, with identity no: 7303260252086.

76.8.15. The Trustees should immediately take all the requisite steps to secure an appropriate bond of security for each of them, to the satisfaction of the Master of the High Court, for the due fulfilment of their obligations and to ensure that the bond/s of security be submitted to the Master of the High Court at the

appropriate time as well as to all other interested parties, including on an annual basis.

76.8.16. Zakiah Mangera is to:-

76.8.16.1. specifically be excluded from charging any remuneration for their duties as trustee, as they might have been entitled to in terms of Section 22 of the Trust Act;

76.8.16.2. be remunerated only for any disbursement(s) incurred in the course and scope of their duties as trustees, such to include but not be limited to travelling expenses for attendances at in person trustee meetings.

76.8.17. That the Trust property and the administration thereof be subject to an annual audit;

76.8.18. The provisions referred to above shall, in accordance with the provisions of the Trust Property Control Act, No. 57 of 1988, be subject to the approval of the Master.

76.9 In the event that the Trust is not established within six months as contemplated in paragraph 7 and 8 above, the Plaintiff is directed to approach this Honourable Court within 30 days of the expiry of the first six months period, to obtain further direction from this Honourable Court with regards to the administration of the capital amount referred to in paragraph 3.

76.10 Pending the formation of the Trust, the First Trustees referred to in paragraph 8.14 above are directed to conduct within one month hereof a "needs analysis" for Zaheer Mangera's maintenance.

76.11 The Defendant is directed to pay the costs of the action to date, which costs shall include but not be limited to, *inter alia*:

76.11.1 The Plaintiff's attorneys costs including but not limited to:-

76.11.1.1 the costs attendant upon obtaining payment of the capital amount and/or legal costs and/or interest in full;

76.11.1.2 the costs of the determination of both the merits and the quantum aspects;

76.11.1.3 telephonic, virtual and/or in person consultations with Plaintiff and/or counsel and/or witnesses and/or experts.

76.11.1.4 perusal of documentation and/or pleadings in the matter, preparation, drafting of correspondence and/or pleadings and/or notices, and/or drafting and considering of settlement proposals and offers;

76.11.1.5 preparation for Block Settlement with the Defendant including the cost of copies of documentation supplied to the Defendant;

76.11.1.6 attorneys reasonable costs of time spent for travel for issue and service;

76.11.1.7 preparation and attendances at Pre-Trial Conferences and Special Pre-Trial Conferences in terms of the Practice Directive/s, including the drafting of the Pre-Trial Agenda's and Special Pre-Trial Agenda;

76.11.1.8 Drafting of the Rule 38(2) Application, the drafting of all affidavits including expert affidavits and affidavits of the lay witness/es;

76.11.1.9 preparation and consultations for Trial (telephonic and virtual included, irrespective of whether client was present), including the drafting of the proposed draft orders and contingency fee affidavits; and

76.11.1.10 all appearances at court and the attorney's reasonable travelling costs to and from Court.

76.11.2 the costs consequent upon the employment of counsel, on Scale B,

76.11.3 the costs of the below mentioned expert witnesses, including but not limited to the costs of consultations with the Plaintiff and/or Attorney of Record and/or Counsel, the costs of the reports and/or addendum report, if any, in accordance with Rule 36(9)(a) and (b) respectively, the costs of securing affidavits from the expert witnesses, reservation costs, namely:-

76.11.3.1. Dr E Schnaid (Orthopaedic Surgeon);

76.11.3.2. Drs Matisonn Scott & Tobias Inc (Radiologist);

76.11.3.3. Ms C W Bekker (Occupational Therapist);

76.11.3.4. Mrs. R Macnab (Educational Psychologist);

76.11.3.5. Dr L Berkowitz (Plastic & Reconstruction Surgeon);

76.11.3.6. Mr C. Sampson (Clinical & Neuropsychologist);

76.11.3.7. Dr LF Segwapa (Neurosurgeon);

76.11.3.8. Dr G. Sugreen (Industrial Psychologist); and

76.11.3.9. Mr. J. Potgieter of GRS Actuarial Consulting (Actuary).

76.11.3.10. the cost associated with the compilation of the RAF 4 Serious Injury assessment Report/s, namely:-

76.11.3.10.1. Dr E Schnaid (Orthopaedic Surgeon);

76.11.3.10.2. Mr C Sampson (Clinical & Neuropsychologist);

76.11.3.10.3. Dr L Berkowitz (Plastic & Reconstruction Surgeon); and

76.11.3.10.4. Dr LF Segwapa (Neurosurgeon).

76.11.4. The reasonable travelling costs of attendances at the medico-legal assessments for the Plaintiff to the experts, including follow up assessment/s.

76.11.5. The aforesaid costs are to be paid by the Defendant directly to the Plaintiff's Attorney.

76.11.6. The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant.

76.11.7. The Defendant is directed to make payment of the taxed and/or agreed costs within 180 (*one hundred and eighty*) days of agreement or taxation, as applicable.

76.11.8. Only in the event that the agreed and/or taxed costs are not paid within 180 *(One Hundred and Eighty)* days as stipulated in paragraph 11.7 above, then in that event, the Defendant shall be liable for interest on the aforesaid agreed or taxed costs or any part thereof, *a tempore mora* from 15 (fifteen) days after this Court Order to date of final payment.

76.12. The Contingency Fee Agreement entered into between the Plaintiff and the Plaintiff's Attorneys of Records is declared valid.

T NGENO

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

APPEARANCES

Heard on	:	18 November 2024
Judgment delivered on	:	17 February 2025
For the Plaintiff	:	Adv M Patel Instructed by Wadee and Wadee Attorneys

		Parkhurst, Johannesburg
For the Defendant	:	Mr TH Ngomana
		Instructed by State Attorney, Johannesburg