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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA,
NORTH GAUTENG DIVISION, PRETORIA**

CASE NO: 27454/2013

DATE: 15/2/2017

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

ANTHONY, M

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MSIMEKI J

INTRODUCTION

[1] The plaintiff, a 22 year old female law student, is suing for damages that she suffered, under different heads, arising from devastating bodily injuries which she sustained in a motor vehicle collision on 10 December 2011 when she was

conveyed as a passenger.

BACKGROUND

[2] At approximately 02h00 on 10 December 2011, in the intersection of Watermeyer and Cussonia Streets, Silverton, Pretoria, the collision referred to in paragraph 1 above, occurred between an unidentified motor vehicle driven by an unidentified driver (the "insured driver") and a motor vehicle with registration number WCS [...] GP driven by C Suliman in which the plaintiff was a passenger.

[3] The plaintiff alleged that the collision was caused due to the sole negligence of the insured driver who was said to be negligent in the manner described in 5.1 to 5.6 of paragraph 5 of the particulars of claim.

[4] The plaintiff further alleged that she, as a result of the aforesaid collision, suffered the following injuries:

- 4.1. a bilateral medial orbital fracture;
- 4.2. inferior blow out fracture;
- 4.3. multiple facial lacerations and open wounds;
- 4.4. bruising to the upper arm;
- 4.5. broken and lost teeth;
- 4.6. a moderately severe head injury; and
- 4.7. severe scarring and disfigurement.

[5] The plaintiff contended that she, as a result of the aforesaid injuries:

- 5.1. underwent medical treatment;

5.2. will have to undergo medical treatment in the future; and

5.3. will suffer a loss of income in the future.

[6] The nature and the extent of the injuries sustained by the plaintiff, and the sequelae relating thereto, in the aforesaid collision, are clearly described in the medico-legal and RAF4 serious injury assessment reports which the plaintiff delivered.

[7] The plaintiff alleged that she, as a result of the injuries sustained by her in the collision and the sequelae, suffered damages in the amount of R 5. 677 292 61 calculated and computed as follows:

7.1. Past medical and hospital expenses: R149 652.61

7.2. Future medical and hospital expenses: Section 17(4)(a) undertaking;

7.3. Future loss of earnings/earning capacity: R3 727 640.00;

7.4. General damages: R1 800 000.00

TOTAL R5 677 292.61

[8] According to the plaintiff:

8.1. The amount of R149 652.61 claimed in paragraph 7.1 above relates to past hospital, medical and related expenses.

8.2. The undertaking in paragraph 7.2 above will cater for anticipated treatment for her injuries.

8.3. G A Whittaker, the actuary, deals with the amount of R3 727 640 claimed in paragraph 7.3 above in the actuarial calculation.

8.4. The amount claimed for general damages in paragraph 7.4 above, is a global amount which cannot be subdivided in headings for damages.

[9] Finally, the plaintiff's claim is for:

9.1. Payment of the amount of RS 677 292.61 together with a **Section 17(4)(a)** undertaking;

9.2. Interest on the aforesaid amount of RS 677 0292 61 at the rate of 9.0% per annum calculated, 14 calendar days from date of judgment to date of payment; and

9.3. Costs of suit.

[10] Advocate Ferguson ("Ms. Ferguson") represented the plaintiff while Advocate Westenaar ("Mr Westenaar") represented the defendant when the matter was heard and argued.

[11] The defendant, in the Pre-Trial minutes of 14 April 2015, and in particular paragraph 3.9 thereof, admitted "the truth, veracity and correctness of the documents contained in the plaintiffs 'Quantum' bundle".

[12] It is important to note that the past medical and hospital expenses in the amount of R149 652 61 have been conceded. The future medical and hospital expenses in the form of **Section 17(4)(a)** undertaking have been tendered. The merits, as at the date before trial, had not been conceded. This, despite the fact that the plaintiff was a passenger in the motor vehicle. The merits, however, were no longer in issue when the matter was heard. The court, at the trial, was informed that it only had to determine the extent of the plaintiff's future loss of earnings/earning capacity and her general damages.

[13] Adams and Adams, the plaintiff's attorneys, instructed Algorithm Consultants and Actuaries to determine the capitalized value of loss of income of the plaintiff. Greg Whittaker of Algorithm Consultants and Actuaries provided such determination. A

medico-legal report dated 7 April 2015 and the Addendum medico-legal report dated 22 April 2015 are from pages 167-171 and from pages 172-177 respectively. They appear under INDEX: PLAINTIFF'S EXPERTS.

[14] It is also important to mention that M. Motaung in the email headed: RE: THIRD PARTY CLAIM: M ANTHONY dated 22 April 2015 12:36PM addressed to Jevounne Le Roux says:

"Good day

The above matter refers as well as your email of the 21st April 2015. Kindly note that the defendant requires you to bring to court the Plaintiff's Educational Psychologist as well as the Industrial Psychologist. The rest of the experts are not required to attend so their reports are accepted".

Although the email came late, it served the purpose because only Mr Wessel Jacobus Wessels from the side of the plaintiff testified.

[15] The plaintiff filed 16 expert reports while the defendant filed only 2.

These reports are as follows:

1. Medico-legal report by Dr DA Birrell (Orthopaedic Surgeon), dated 20 November 1-17
2. Addendum medico-legal report by Dr DA Birrell (Orthopaedic Surgeon), dated 27 August 2014 17.1-17.2
3. Medico-legal report by Dr PB White (Plastic & Reconstructive Surgeon), dated 9 October 2013 18-24
4. Medico-legal report by Dr JJ du Plessis (Neurosurgeon), dated 10 December 2014 24.1-24.10
5. Medico-legal report by Dr HW Kluge (Maxilla, Facial and Oral Surgeon), dated 4 June 2013 25-29

6. Addendum medico-legal report by Dr HW Kluge (Maxilla, Facial and Oral Surgeon), dated 17 November 2014 29.1
 7. Medico-legal report by Dr K Carpenter-Kling (Ear, Nose and Throat Surgeon), dated 13 May 2013 30-33
 8. Medico-legal report by Dr M Mazabow (Neuropsychologist), dated 22 April 2013 34-58
 9. Medico-legal report by Dr P Gous (Ophthalmologist), dated 16 January 2013 59-61
 10. Medico-legal report by Dr D A Shevel (Psychiatrist), dated 5 December 2013 62-80
 11. Medico-legal report by Ms T Holshausen (Occupational Therapist), dated 11 September 2014 81-115
 12. Medico-legal report by Ms Brigitte-Leigh Purchase (Educational Psychologist), dated 24 November 2014 116-139
 13. Addendum medico-legal report by Ms Brigitte-Leigh Purchase (Educational Psychologist), dated 24 November 2014 139.1-139.6
 14. Medico-legal report by Wessel Wessels (Industrial Psychologist), dated 2 April 2015 140-166
 15. Medico-legal report by Greg Whittaker (Actuary), dated 7 April 2015 167-171
 16. Addendum medico-legal report by Greg Whittaker (Actuary), dated 7 April 2015 172-177
- [16] The defendant's expert reports and the relevant pages are as follows:
1. Medico-legal report completed by Mr E Bloye, (Clinical Neuropsychologist), dated 6 May 2014 1-33
 2. Medico-legal report completed by Corne! Schoombee (Industrial Psychologist),

[17] Index: Joint Minutes from pages 1-2; page 3 and pages 4-12 respectively comprise Joint Minutes of a joint meeting held between Dr Mazabow and Mr E Bloye on 2 June 2014; Addendum to the joint minute of their meeting held on 16 April 2015 and Minutes of a telephonic meeting held between Wessel Wessels and Cornel Schoombee dated 21 April 2015.

[18] The plaintiff, in support of her case, called Wessel Jacobus Wessels the, industrial Psychologist, as her witness. The defendant's counsel informed the court that the defendant would rely on the Joint minutes. The defendant's case was closed once the plaintiff closed her case.

[19] Plaintiff's counsel furnished the Court with the plaintiff's heads of argument for which I am thankful.

[20] Mr Wessel J Wessels testified telling the court that he is an industrial psychologist and that he spent 30 years in the Human Resources field and in the Corporate environment where he held extensive positions in large corporations. He practised in the medico-legal field for the last 12 years. He has, many times, assisted the courts with his testimony and has produced medico-legal reports in excess of a thousand. His expertise was not challenged.

[21] Mr Wessels prepared his report with the benefit of having seen other medico-legal reports filed in the matter. It is common cause that the plaintiff is a student and that she lives with her parents in Silverton. The plaintiff matriculated from Pretoria High School for girls in 2010 and obtained three distinctions. According to Mr Wessels, the plaintiff held no leadership positions during her school days.

[22] Mr Wessels testified that the plaintiff passed her BA (Political Science: International relations) degree in 2013. The results of her LLB degree first year of study in 2014 reveal that she failed two subjects and was not allowed to write two more subjects. This, according to the witness demonstrates the extent of the brain injury that she sustained in the accident. The joint minute of Dr M Mazabow and Mr

E Bloye, the neuro psychologists demonstrates that the plaintiff sustained "a significant traumatic brain injury" and that the prognosis for her "neuro-psychological difficulties is poor, and psychotherapy will not resolve these". The two experts agree that the most reasonable explanation for the plaintiff's "areas of neuropsychological difficulty is the traumatic brain injury sustained".

[23] Mr Wessels testified that the plaintiff, prior to the accident, had above average intellectual capability which allowed for good foundation for tertiary studies at an advanced level. The witness testified that the plaintiff's injuries would have a definite curtailing effect to her productivity both at university and in the work place. He referred to paragraph 3.15 of Brigitte Purchase's (the Educational Psychologist) Addendum report wherein she states that her views remain unchanged "that while Monique's performance on this assessment indicates that her intellectual functioning remains within the average range, subtle difficulties remain which may compromise her productivity both at university and in the work place". The plaintiff's difficulties, according to Brigitte Purchase, include:

1. Variable attention and concentration;
2. Impulsivity;
3. Proneness to careless errors;
4. Ability to understand and decode complex language which is particularly relevant to understanding jargon and foreign language terminology encountered in the legal degree;
5. Increased irritability, frustration and fatigue;
6. Social withdrawal and avoidance of typical student life and activities;
7. Avoidance of extramural activities just to keep up with her academic load;
8. Reduced self-confidence, self-esteem and independence; and

9. Increased stress and anxiety with an ongoing fear of traffic and avoidance of learning to drive.

[24] Mr Wessels testified that the plaintiff, according to the educational psychologist and the neuro psychologists, having sustained a significant traumatic brain injury, will have subtle difficulties "which *may* compromise her productivity both at university and in the work place". Her work capacity, it is submitted, "is expected to be at a reduced level compared to the pre-accident scenario due to the presenting variability in attention and concentration". Mr Wessels testified that the educational psychologist's view is that the plaintiff's academic record discloses that her university results are not in keeping with her pre- morbid results. This, according to the educational psychologist, implies that the plaintiff will need an additional year at University to complete her degree which, in turn, will result in her entering the labour market at least a year later.. This, because the plaintiff will need more time to absorb tertiary study material than she would prior to the accident. The Industrial psychologists agree with this view in their joint minute.

[25] Mr Wessels testified that the medico-legal reports reveal that the plaintiff will not be as effective as she was prior to the accident. She will not have the same productive capacity as uninjured persons and other candidates that she will have to compete with for work and employment. This, according to him, will have impact on the plaintiff compared to other young graduates when they submit their CV's.

[26] The witness, in his 30 years of involvement in corporate life, was tasked with recruitment and employment for virtually all positions in the industry including the legal profession. In a legal environment according to him, university performance is a very good indicator of future success. He testified that a work environment entails content complexity of the studies and being able to apply such in the work environment. The better the results, according to him, the better the chances of being selected. How the degree was attained, according to him, becomes crucial and key.

[27] Mr Wessels testified that the fact that the plaintiff has to exert a lot more time to

attain good results cuts into her free time.

[28] One, in a corporate world, looks at how balanced a person's profile is. This includes checking if there was interest in other spheres of life and what other contributions were made, e.g. community involvement in terms of social environment; religion; family life; recreation etcetera. The witness testified that the more complete a balanced profile is, the better the chances of being able to deal with challenges that present themselves in work and corporate environment.

[29] The witness testified that studying never stops as getting a degree is but a starting point of a career. There is greater pressure in digesting complex material and application of knowledge makes the difference. Pressure and demand for performance be it in a corporate environment or in a practice, according to the witness, has become relentless and very demanding. Full-time study, according to him, is a protected environment where the only demand is to complete the material. The demand in a work environment is substantially more. One deals with people, applies the knowledge and manages conflicts while being self-assured, confident, goal driven and directive. The plaintiff, according to Mr Wessels, will struggle more in the working environment. His further testimony was that the plaintiff present's with anxiety and depression. The neuro psychologists, in their joint minutes, agree that this may, contribute to her difficulties. With pressure and placed under stress struggling to complete and deliver at maximum productive capacity may result in depression and anxiety becoming a curtailing factor lessening the capacity to perform.

[30] The struggling of the plaintiff at the entry level, according to the witness, has a profound effect on her future growth and also has prolonged effect on career growth meaning that longer time, if at all, will be needed.

[31] Asked how the plaintiff's difficulties may affect remuneration, he answered that remuneration was divided into guaranteed and variable sections. The witness testified that the plaintiff would lose in both instances. In guaranteed section, according to the witness, the plaintiff may lose as a result of slow growth. Variable section has performance bonuses, share allocation and profit sharing to mention but

a few. Variable is purely performance driven hence the saying "No performance no sharing". The witness testified that working in a firm of attorneys or partnerships is purely result driven. A partner who fails to make it like the others, according to him, is usually in trouble. The difficulties, according to the witness, would affect the plaintiff in all the areas of her working life if she was self-employed.

[32] The industrial psychologists agreed that the legal profession whether as an attorney or legal advisor "demands, *inter alia*, but not restricted to, high levels of concentration, attention to detail, the ability to work through and digest large amounts of complex material, the ability to concentrate for extended periods of time, the ability to work long hours, the ability to appear before the public, other colleagues, clients and effectively, to "think on your feet" etcetera". The plaintiff's abilities, according to Mr Wessels, appear to have been affected by the sequelae of the accident considering "the opinions of the experts as referenced". This, according to the witness, may have negative influence on the plaintiff's productive capacity and the level of earnings. The plaintiff may experience slowed career progression as she according to the witness, may not be able to compete equally with others in the legal profession.

[33] Based on the plaintiff's difficulties, the Industrial Psychologists recommended "that a substantially higher post-accident contingency deduction be applied. They noted that the application of contingencies is the prerogative of the Court and/or the legal parties involved. Based on the legal reports, I am of the view that the recommendation has merit.

PRE-ACCIDENT

[34]

1. The Industrial Psychologists acknowledge the plaintiff's qualifications as set out in their respective reports.
2. Acknowledge the plaintiff's work record as set out in their respective reports.
3. Based on her post-accident educative achievements, the opinions of the Educational Psychologist and the clinical (Neuro) Psychologists, it is postulated

"that the plaintiff would, but for the accident, have been capable of completing her degree unabated at the end of 2017.

4.1. they: agreed that the plaintiff's current reported intention is to become an Attorney.

4.2. "suggest that a straight line increase be applied after completion of studies by start of 2019 CJ Schoombee ("CS") allowing one extra year of study) at career entry point R268 500 00 p.a (Paterson C1) until the career ceiling by age 45 years of R971 400 00 (Paterson 04) as this results in a decreasing pattern of real increases in earnings, with annual inflationary increases thereafter. Retirement age to be taken at 65 years". They suggested further that for calculation purposes, annual increases be taken during January of every year. They further agreed that appropriate contingencies deductions be considered and applied to integrate the chances of the plaintiff to in fact have successfully completed the intended law degree by the time suggested and to have progressed in terms of career earnings suggested.

POST-ACCIDENT

[35] The plaintiff, a full-time student at the time of the accident, suffered no loss of earnings and there has been no further loss in terms of time lost. The following facts need to be considered when assessing the plaintiff's claim keeping in mind that she remains a second year full-time student studying towards her LLB degree:

1. Lesser impact on residual work and productive capacity.

Orthopaedic surgical-, Ophthalmology-, Ear/Nose and Throat-, Occupational Therapy-and psychiatric opinions reveal no truncation/restriction/negative impact on the plaintiff's residual work and productive capacity.

2. Direct impact on the residual work and productive capacity.

The MR scan of the brain, according to Neuro-Surgical opinion, reveals signs of a focal injury to the posterior aspect of the right parietal lobe which has not resulted in neurological deficit but has aggravated the effect of the diffuse brain injury.

The plaintiff, according to **Plastic and Reconstructive Surgery opinion**, has surgical-trans coronal scar with loss of hair-bearing skin, widened vertical scar of the forehead, widened scar of the left eyebrow and a scar of the left upper lip. Further surgery is not recommended as all these injuries cannot be improved.

Educational psychology opinion is that the plaintiff, having regard to her intellectual capacity, academic progress, motivation levels and commitment to her education, should be able to complete her four year LLB degree.

Psychotherapy may assist with her symptoms of trauma, her lowered self-esteem and self-confidence, her stress and anxiety, her avoidance of the opposite sex and social withdrawal and her fear of her learning to drive. The plaintiff's intellectual functioning remains within the average range but there are subtle difficulties which may compromise her productivity in the work place. I referred to the difficulties earlier on.

Joint Clinical (Neuro) Psychological opinions agree that the plaintiff sustained a significant direct impact to her head associated with a traumatic brain injury that was probably mild-to-moderate and that a focal frontal (orbito-medial) injury cannot be ruled out. The subtle difficulties which the plaintiff has have been referred to earlier. The plaintiff experiences mild but chronic depressive symptoms resulting from the cosmetic changes sustained in the accident and from her reduced smell-sensation and taste-sensation which have impacted on the quality of her life. She also experiences chronic posttraumatic anxiety symptoms.

Industrial Psychologists agree that the plaintiff should spend higher levels of time and effort while studying to compensate adequately for her subtle cognitive difficulties referred to above.

The Occupational Therapist was informed by the plaintiff that she was unable to meet the time or accuracy demands on a basic computer-typing work sample. She could not maintain adequate attention and concentration, consistency of performance and management of impulsivity in responses.

[36] An actuarial calculation based on the agreement between the Industrial psychologists was obtained. The calculation incorporated:

1. A 1 year delay in the plaintiff's entry into the labour market.
2. Differential contingency deductions of 25% (scenario 1), 35% (scenario 2) and 45% (scenario 3)

It was argued and submitted on behalf of the plaintiff that following upon the plaintiff's injuries, an appropriate application of the disabilities and sequelae would be the application of a 35% post morbid contingency deduction. The argument and submission, in the light of the evidence in its entirety seems to have merit.

[37] This takes me to the issue of the correct contingency deduction to be applied in this case. As shown in paragraph 36 above, the actuaries produced differential contingency deductions which involved three scenarios, namely of 25%, 35% and 45%. The parties agree that this deduction should be done but disagree in respect of the correct scenario that should be preferred and applied. The view, on behalf of the plaintiff, is that having regard to the injuries of the plaintiff and the circumstances of the case the second scenario should be preferred while on behalf of the defendant, the view is that the first scenario should be followed.

[38] General damages are the next aspect that deserves the Court's consideration. Ms. Ferguson, on behalf of the plaintiff, argued that the circumstances of the plaintiff warrant an award of general damages in the amount of R1 600 000 00. She referred the Court to a number of cases relevant to the issue. On the other hand Mr Westebaar argued that R500 000 00 was adequate as an award for general damages. Ms. Ferguson submitted that there was no valid basis for regarding the amount of R500 000 00 as appropriate in the circumstances of the plaintiff's case. Moreover, according to Ms. Ferguson, no case law or law was referred to by Mr Westebaar who merely relied on two of the cases that were referred to on behalf of the plaintiff and the joint minutes of the medical experts. There seems to be merit in

this submission.

[39] The plaintiff suffered a number of injuries which include a bilateral fracture; inferior blow out fracture; multiple disfiguring facial lacerations and open wounds. The radiological examination revealed fractures involving the frontal bones, nasal bones, maxillary bones as well as the right medial orbital rim with medial orbital blowout fractures; bruising to the upper arm; broken and lost teeth; a head injury; severe scarring and disfigurement; a split pallet; a fracture of the septum (nose); a soft tissue injury of the right knee; a surgical trans coronal scar with loss of hair bearing skin (over the top of her head); concussion; and a moderate concussive brain injury that aggravated the effect of the diffused brain injury. A recent MR scan revealed signs of a focal injury to the posterior aspect of the right parietal lobe.

[40] To treat the plaintiff, the following was done: The plaintiff was admitted to the trauma unit at Wilgers Hospital with a GCS of 14/15 and extensive open facial fractures; a CT scan of the brain and facial bones were performed together with blood tests; the plaintiff was given an infusion for pain and admitted to the high care unit; a cranio plasty and open reduction and internal fixation of her facial fractures was performed; facial lacerations were sutured, she required blood transfusion; she remained in hospital for eight days after the collision and was discharged on 18 December 2011; a plate was inserted in her pallet as well as the implant for the lost teeth. She was getting prosthetic teeth and was under treatment of a prosthodontist and dentist; and underwent physiotherapy with breathing exercises and needed assistance to learn to walk.

[41] The following need to be borne in mind: The plaintiff is forced to wear a plate in her mouth where her pallet burst. She has a lot of discomfort when she eats because there is a hole in her pallet with one of the screws protruding through the hole. She has extensive facial scarring, a 10cm area below her right knee is numb and lack sensation; it is envisaged that she may develop neck symptoms; she initially could not smell and taste; she has developed mood swings and has become irritable which, according to Dr du Plessis, could be as a result of the injuries to her frontal lobes; she is less outgoing and more reserved; she has become forgetful and self-conscious about her appearance; her sense of taste has changed. She

sustained significant direct impact to her head, had significant confusion, disorientation and amnesia (with vomiting) an indication of a mild to moderate concussive injury; she was highly self-conscious about her scarring and experienced post-traumatic stress feeling vulnerable and fearful when she returned to University; the indication, according to Dr Mazabow, is that she sustained a mild to moderate concussive brain injury which has resulted in subtle neuro-psychological difficulties which will be exponentially greater in the work context and Dr Shevel diagnosed mild chronic psychological adjustment difficulties secondary to a motor vehicle accident with associated physical injuries.

[42] Further operations for the repair of the plaintiff's palatal fistula are envisaged. The plate and screws through maxilla facial and oral surgery need to be removed. Placement of implants of teeth will be required together with bone augmentation. One week's absence will be required for a prosthodontics for dental reconstruction and implants. The reconstruction of the anterior maxilla with restoring of function is also envisaged. Finally she will require psychotherapy.

[43] The plaintiff has lost her earning capacity due to the neurocognitive and neuropsychiatric sequelae of the concussive brain injury. For the plaintiff to successfully make it at tertiary level and work, increased levels of time are required because she needs to spend more time and effort studying than she did in the past as she is now slow in her learning and processing of information. She appears to have developed a tendency of sleeping in the afternoon despite having had a good night's rest which used not to be the case before the accident. The plaintiff's subtle difficulties referred to in the reports and this judgment impel her to compensate adequately for them by spending higher levels of time and effort in order to prevent errors. This, it is submitted, explains why she tires rapidly. The evaluations of the plaintiff confirm this. She, as a result, has to repeat information and double check her work to avoid errors. It is feared that the plaintiff is likely to be more prone to errors and to performance inconsistency. The occupational therapist observed that the plaintiff presented with inability to meet the time or accuracy demands on a basic computer-typing work sample. Increased fatigue ability was also observed together with difficulties in meeting inherent worker characteristics common to most work environments. It is envisaged that the plaintiff's work capacity will be at a reduced

level compared to the pre-accident scenario due to the presenting variability in attention and concentration.

[44] The educational psychologist has noted that the plaintiff's academic record reveals that her University results are not in keeping with the pre-morbid results. This makes it more probable that she will require an additional year at University to complete her degree. What appears worrisome is that when applying for appointment as a candidate attorney, prospective employers will immediately pick it up that she took additional years to complete her degrees, that she did not participate in extra-curricular activities or volunteer to assist in outreach programmes or legal aid clinics.

[45] The assessments conducted reveal that while her intellectual function remains in the average range subtle difficulties referred to above remain and these may compromise her productivity in the work place. Some of the factors which affect her work capacity negatively are, *inter alia*, variable attention and concentration, impulsivity, proneness to careless errors and her ability to understand and decode complex language e.g. understanding jargon and foreign language terminology used in a legal degree. The plaintiff, it is noted and submitted, has inabilities or challenges referred to above which may result in her not being able to compete equally with others in the legal profession and she may in that event experience slower career progress.

[46] The industrial Psychologists confirm the plaintiff's challenges and inabilities outlined above. Dr M. Mazabow and Mr E. Bloye in their addendum to their joint minutes noted the recent MRI brain scan findings of right high parietal gliosis and residual signs of multiple punctate haemorrhages as well as the neurosurgeon's opinion that these are post-traumatic in nature. They further noted the neurosurgeon's grading of a moderate concussion brain injury aggravated by focal right parietal damage as well as his opinion that the plaintiff's personality changes could be due to frontal lobe damage. They, as a result, agreed that:

1. The traumatic brain injury sustained was significant;

2. The most reasonable explanation for the plaintiff's areas of neuropsychological difficulty is the traumatic brain injury sustained;
3. anxiety/depression may contribute to the plaintiff's difficulties but are not the primary cause of those difficulties;
4. The prognosis for the plaintiff's neuropsychological difficulties is poor and that psychotherapy will not resolve these.

[47] The industrial Psychologists, W. J Wessels and C. J Schoombee, after considering the plaintiff's injuries and the circumstances of her case, agreed and based on their considerations, recommended that a substantially higher post-accident contingency deduction be applied. They also acknowledged that the application of contingencies is the prerogative of the Court and the legal parties involved.

[48] This then takes me to the issues of the contingency deduction and general damages. I have, above referred to the aspects which the actuarial calculation incorporated based on the agreement reached between the Industrial Psychologists.

[49] The issue of contingency additions or deductions has been dealt with in the famous case of **Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A)**. The court, in this case, stated that a judge is not tied down by inexorable actuarial calculations where the method of actuarial calculation is adopted and that the judge has a wide discretion to award what he considers right. The court, according to the case, in exercising the discretion considers the making of a discount for contingencies or the vicissitudes of life as one of the elements. The elements which the court must consider include such matters as the possibility that the plaintiff may in the result have less than normal expectation of life and that she may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. It must be borne in mind that the amount of any discount varies according to the circumstances of each case. It clearly is evident that the rate of the discount cannot be assessed on any logical basis because the assessment, in the main, is arbitrary and depends on the trial

Judge's impression of the case. (See: **Legal Insurance Company Ltd v Botes 1963 (1) SA 608 (A) at 614F and Van der Plaats v South African Mutual Fire and General Insurance Company Ltd 1980 (3) SA 105 (A) at 114-115**).

[50] Windeyer J, in **Bresatz v Przibilla (1962) 36 ALJR 212 (HCA) at 213** stressed that each case depends upon its own facts. According to the Judge "*all 'contingencies' are not adverse*": All "*vicissitudes*" are not harmful. Indeed the circumstances of cases differ and this is a very important consideration.

[51] It was submitted on behalf of the plaintiff that contingency deductions or additions although deductions, in practice, are usually in issue, are adjusted upward or downward depending upon the nature of the underlying assumptions. The more liberal the underlying assumptions, the submission proceeded, the higher the contingency deductions will be, and the more conservative the underlying assumptions, the lower the contingency will be.

[52] In support of the submission that a substantially higher post-accident contingency deduction be applied; and in support of the plaintiff's claim for general damages in the amount of R1 600 000 00, the Court was referred to a number of cases by the plaintiff. The defendant only referred to two cases.

[53] I have duly considered the cases dealing with contingency deductions and comparable awards in respect of general damages that the Court was referred to.

[54] Algorithm Consultants and Actuaries, as already shown above, have three scenarios in their calculations of the plaintiff's future loss of earnings and earning capacity. The value of the plaintiff's income uninjured has been taken as R11 464 145. The contingency deduction of 15.00% has been applied in respect of her income uninjured in the three scenarios. 25.00%, 35.00% and 45.00%, respectively, have been applied in the contingency deduction post-accident in the three scenarios. The total net loss in respect of the three scenarios amounts to R1 539 683, R2 633 661 and R3 727 640 respectively.

[55] The amount of R1 539 683, according to the submission, on behalf of the

defendant, should represent the plaintiff's future loss of income and earning capacity. It was further submitted on behalf of the defendant that R500 000 00 constitutes reasonable general damages for the plaintiff. The submission, on behalf of the plaintiff, on the other hand, is that scenario 2 properly represents the plaintiff's future loss of her earnings and earning capacity. According to the submission, the true total net loss of her earnings and earning capacity as calculated by Algorithm Consultants and Actuaries should be the amount of R2 633 661. This submission is persuasive, convincing and has substance. Having regard to the nature and circumstances of the plaintiff's case. I am of the view that scenario 2 is appropriate as it properly accounts for all the factors that should be considered in the determination of post-accident contingency to be applied. The amount of R500 000 00 suggested as general damages, in my view, is not adequate.

[56] Coming to the general damages, I have as shown above, paid due regard to the cases that the Court was referred to. Having regard to the nature and circumstances of the plaintiffs case, I am satisfied that the amount of R1 600 000 00 which I regard as reasonable, fair and adequate, in respect of general damages, adequately compensates the plaintiff.

[57] The defendant, in my view, must be ordered to pay the plaintiff an amount of R4 383 313.61 made up as follows:

1. Past medical expenses: Care giver	R149 652.61
2. Future medical and hospital expenses	Section17(4)(a) Undertaking
3. Future loss of earnings and earning capacity	R2 633 661.00
4. General damages	R1 600 000.00
TOTAL	R4 383 313.61

[58] As shown above, past medical expenses have been conceded. Future medical and hospital expenses have been tendered.

[59] The plaintiff provided the Court with a draft order which I have perused and amended with which I am satisfied. I have amended the draft order and the amount which the defendant has to pay the plaintiff. The Draft Order together with annexure "A" and annexure "B" are attached to my judgment.

ORDER

[60] I make the following order:

The Draft Order marked "X" as amended is made and order of the Court.

M. W. MSIMEKI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION OF THE HIGH COURT,
PRETORIA

DRAFT ORDER

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

**HELD AT PRETORIA ON THIS THE 23RD DAY OF APRIL 2015 AT COURT 6E
BEFORE THE HONOURABLE JUSTICE LEDWABA (DJP)**

CASE NO: 27454/2013

In the matter between:

ANTHONY, M

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

HAVING HEARD COUNSEL for the Plaintiff and the Defendant and by agreement
between the parties:

THE COURT GRANTS JUDGEMENT in favour of the Plaintiff against the Defendant in
the following terms:-

1. The Defendant shall pay the sum of R4 383 313.61 (four million three hundred and eighty three thousand, three hundred and thirteen rand and sixty one cents) to the

Plaintiff's attorneys, Adams & Adams, in settlement of the Plaintiff's claim, which amount shall be payable by direct transfer to their trust account, details of which are as follows:

Account holder : **Adams & Adams Trust Account**
Bank : **Nedbank**
Branch : **Pretoria**
Branch code : **198765**
Account number : **[...]**
Reference : **JPR/JLR/P335**

2. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) in respect of 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 10 December 2011.
3. The Defendant is liable for payment of 100% of the reasonable costs of the Trustee appointed in terms of paragraph 4 hereof, in respect of establishing a Trust and any other reasonable costs that the Trustee may incur in the administration thereof including his fees in this regard, which shall be recoverable in terms of the Undertaking issued in terms of Section 17(4)(a), and which costs shall also include and be subject to the following:-
 - 3.1. The fees and administration costs shall be determined on the basis of the directives pertaining to curator's remuneration and the furnishing of security in accordance with the provisions of the Administration of Deceased Estates Act, Act 66 of 1965, as amended from time to time, and shall include but not be limited to disbursements incurred and collection commission calculated at 6% on all amounts recovered from the Defendant in terms of the Section 17(4)(a) Undertaking;
 - 3.2. The monthly premium that is payable in respect of the insurance cover which is to be taken out by the Trustee to serve as security in terms of the Trust

Deed;

- 3.3. All the abovementioned costs shall be limited to payment of the reasonable costs which the Defendant would have had to pay regarding appointment, remuneration and disbursements had the Trustee been appointed as a *Curator Bonis*;
 - 3.4. The costs associated with the yearly audit of the Trust by a chartered accountant as determined in the Trust Deed;
 - 3.5. The appointment and reasonable costs of a case manager.
4. That the net proceeds of the payments referred to above as well as the Plaintiff's truced or agreed party and party costs payable by the Defendant, after deduction of the Plaintiff's attorney and own client legal costs (the "capital amount"), shall be payable to a Trust, to be established within six months of the date of this order, which Trust will:-
- 4.1. contain the provisions as more fully set out in the draft Trust Deed attached hereto marked Annexure "A";
 - 4.2. have as its main objective to control and administer the capital amount on behalf of the Plaintiff;
 - 4.3. CONSTANT WILSNACH will be the first trustee with powers and abilities as set out in the draft Trust Deed attached. His consent is marked annexure "B".
 - 4.4. The trustee(s) will be obliged to furnish security to the satisfaction of the Master of the High Court of South Africa for the assets of the Trust and for the due compliance of all his/her obligations towards the trust.
5. Should the aforementioned Trust be established within the six month period, the Trustee thereof is authorised to pay the Plaintiff's attorney and own client costs out of the Trust funds in so far as any payments in that regard are still outstanding at

that stage.

6. Should the aforementioned Trust not be established within the six month period:-

6.1. The Plaintiff's attorneys are directed to approach the court within six months thereafter in order to obtain further directives in respect of the manner in which the capital amount is to be utilized in favour of the Plaintiff;

6.2. The Plaintiff's attorneys are authorised to invest the capital amount in an interest bearing account in terms of Section 78(2A) of the Attorneys Act to the benefit of the Plaintiff with a registered banking institution pending the finalization of the directives referred to in paragraph 6.1 above;

6.3. The Plaintiff's attorneys are prohibited from dealing with the capital amount in any other manner unless specifically authorised thereto by this court, subject to the provisions contained in paragraphs 4 to 7 hereof.

7. Until such time as the Trustee is able to take control of the capital sum and to deal with same in terms of the trust deed, the Plaintiff's attorneys are authorised and ordered to pay from the capital amount:

7.1. any reasonable payments to satisfy any of the Plaintiff's needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim;

7.2. the attorney and own client costs of the Plaintiff's attorneys;

7.3. such other amount(s) as may reasonably be indicated and/or required for the well being of the Plaintiff and/or in her interest which a diligent *curator bonis* would have paid had such *curator* been appointed

8. The Defendant must make payment of the Plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall include the following:-

- 8.1. The fees of Senior-Junior Counsel on the High Court Scale, inclusive of Counsel's full, reasonable day fees for 23 April 2015 and the costs for the preparation of heads of argument, if any;
- 8.2. The reasonable taxable costs of obtaining all medico-legal/ expert, RAF4 Serious Injury Assessment and actuarial reports from the Plaintiff's experts, which were furnished to the Defendant;
- 8.3. The reasonable taxable preparation, qualification and reservation fees, if any, of the following experts of whom notice has been given, being:-
 - 8.3.1. Dr DA Birrell;
 - 8.3.2. Dr JJ du Plessis;
 - 8.3.3. Dr M Mazabow;
 - 8.3.4. Dr Carpenter-Kling;
 - 8.3.5. Dr DAShevel;
 - 8.3.6. Dr P Gous;
 - 8.3.7. Dr H Kluge;
 - 8.3.8. Dr PB White;
 - 8.3.9. Ms B Purchase;
 - 8.3.10. Ms T Brown;
 - 8.3.11. Mr W Wessels;
 - 8.3.12. Mr GA Whittaker.
- 8.4. The costs of a consultation between the Plaintiff and her attorney to discuss the terms of this order;
- 8.5. The reasonable taxable accommodation and transportation costs (including Toll and E-Toll charges) incurred by or on behalf of the Plaintiff in attending medico-legal consultations with the parties' experts, consultations with the Plaintiff's legal representatives and the court proceedings, subject to the discretion of the Taxing Master;
- 8.6. The allowances payable to witnesses in civil cases as published in

government Gazette No 30953 (No R394) dated 11 April 2008 and specifically section 4 thereof shall not be applicable and the Defendant shall make payment of the full fees in respect of attending court and/or reservation to testify of Mr Wessel Wessels;

8.7. The above costs will also be paid into the aforementioned trust account;

8.8. It is recorded that Adams and Adams do not act on a contingency fee basis for services rendered in this matter.

9. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:-

9.1. The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

9.2. The Plaintiff shall allow the Defendant 7 (SEVEN) court days to make payment of the taxed costs from date of settlement or taxation thereof;

9.3. Should payment not be effected timeously, the Plaintiff shall be entitled to recover interest at the rate of 9% on the taxed or agreed costs from date of agreement or allocatur to date of final payment.

BY ORDER OF THE COURT

JPR/JLR/P335

ANNEXURE "A"

DEED OF TRUST

In pursuance of a Court Order of the High Court of South Africa (GAUTENG DIVISION, PRETORIA) dated 23 April 2015 In Case No. 2013/27454 in the matter between M ANTHONY and the ROAD ACCIDENT FUND.

entered into by and between

JEAN-PAUL RUDD

attorney representing the Plaintiff in the abovementioned matter
(hereinafter referred to as the "Donor")

and

CONSTANT WILSNACH

(hereinafter referred to as the "TRUSTEE")

In terms of which the Donor donates to the TRUSTEE, the sum of R100.00, which amount is to be held by the TRUSTEE in trust and be administrated by him in terms of the conditions and terms of this Deed of Trust as is herein set out:-

1. DONATION

The Donor hereby donates to the TRUSTEE the sum of R100.00, which amount will be paid to the TRUSTEE and will be received by him with the registration of this Deed.

2. **NAME OF TRUST**

The Trust will be known as the M ANTHONY TRUST.

3. **TRUSTEE**

3.1. The first TRUSTEE of this Trust will be the person described as TRUSTEE in the preamble to this Trust Deed. This office will be held by him for an indefinite period until his resignation or incapacity or the termination of the Trust;

3.2. The TRUSTEE is required to furnish security to the Master of the High Court of South Africa for the assets of the Trust as may be required in terms of the provisions contained in the Trust Property Control Act as amended from time to time.

4. **BENEFICIARY**

The beneficiary of this Trust will be M ANTHONY, a person suffering from a mental illness as described in section 1 of the Mental Health Care Act, 17 of 2002 or a serious bodily impairment which prevents such person from generating sufficient income for her own maintenance or managing her own affairs, with regards to the income derived from the Trust assets and the capital shall also be used to the benefit of M ANTHONY in such a way as the TRUSTEE may deem appropriate but subject to the terms of this Deed of Trust. Should M ANTHONY pass away, the Trust's assets will be transferred to the heirs of MORNIOUE ANTHONY as set out in the Will of M ANTHONY or should M ANTHONY not leave behind any will the assets will be transferred to the intestate heirs of M ANTHONY in accordance with the provisions of the Intestate Succession Act as amended from time to time.

5. **OBJECTIVES**

The objectives of this Deed of Trust are the following:-

5.1. To maintain and support the said M ANTHONY physically and mentally for

the remaining part of her life;

- 5.2. The TRUSTEE will as far as possible endeavour to utilise the funds of the Trust to comply with the medical needs of the mentioned M ANTHONY. In this respect the TRUSTEE will in his discretion, and if he deems it necessary, be authorised to make use of medical advice in overseas countries and if necessary, send the mentioned M ANTHONY to the foreign country if the TRUSTEE in his discretion deems it to the benefit of M ANTHONY and if there are sufficient grounds and funds for such advice and medical treatment;
- 5.3. To provide accommodation to the beneficiary and one other person who will act as the beneficiary's caretaker/nurse if necessary and affordable. In this respect the TRUSTEE will also be entitled in his discretion to employ people and to remunerate them for services rendered to M ANTHONY where and if necessary and affordable.
- 5.4. To do anything that the TRUSTEE in his discretion deems necessary for the general wellbeing of the mentioned M ANTHONY and the TRUSTEE will be entitled to incur such reasonable costs as he deems necessary in this regard in his absolute discretion;
- 5.5. To invest the Trust's assets and to act therewith in such a manner so as to attempt to increase same and if possible to cause capital growth in order for the funds paid over in trust to be administered for as long as possible, to the benefit of M ANTHONY

6. **ASSETS**

The assets of the Trust will include:-

- 6.1. The assets donated to the Trustee in terms of this Deed as well as any additions and accruals thereto;
- 6.2. All donations and inheritances donated or bequeathed to the Trust in supplementation of the Trust's assets;

6.3. All assets that the Trust may purchase with its own funds or borrowed funds or that may be acquired by any other juristic act;

6.4. Any assets that may be allocated to the Trust in terms of an Order of Court.

7. **INCOME FROM THE TRUST**

The income of the Trust will be all income earned by means of the Trust's assets.

8. **POWERS OF THE TRUSTEE**

8.1. To enable the TRUSTEE to comply with all obligations in terms of the Deed of Trust, the TRUSTEE will be entitled:-

8.1.1. To perform any act in general, whatsoever, that is according to his opinion, beneficial for the preservation and growth of the assets of the Trust, or in the interest of the Beneficiary. The powers entrusted to him according to the paragraphs hereinafter do not limit the generality of this sub-paragraph;

8.1.2. To use any part of the assets or income of the Trust for payment of any costs reasonably incurred by him in relation to his duties and obligations as TRUSTEE;

8.1.3. To invest the assets or income of the Trust or any part thereof, in such a manner as he may deem proper in his discretion. Without detracting from the generality of the aforementioned clause, he will be entitled to invest in shares in public companies, building societies, loans with security, investments in state and municipal shares, investments in fixed property or any such assets as he may deem beneficial to the Trust and its beneficiary which will also include moveable assets of whatsoever nature if deemed reasonable to the benefit of the beneficiary. Such moveable assets may be used or consumed by the

TRUSTEE if, in his discretion, it is deemed to be reasonably in the interest of the beneficiary. He will furthermore be entitled to call up any investments, to make any investments solvent, to convert, amend, realise and to re-invest such investments in any manner reasonably deemed appropriate;

8.1.4. If the TRUSTEE practises a profession and in such capacity performs any other act or service on behalf of the Trust, in such capacity, the TRUSTEE will be remunerated for his professional services rendered without limiting or reducing his right to remuneration as stipulated hereinafter;

8.1.5. To institute legal and arbitration proceedings and to oppose same in any competent court with regard to any matter forthcoming from the Trust and to pay the costs incurred in relation thereto from the assets or income of the Trust;

8.1.6. To purchase, sell, let, hire or to hire-purchase any assets;

8.1.7. To reasonably acquire or renounce, in any manner whatsoever, rights on behalf of the Trust where such actions are in the best interest of the Trust;

8.1.8. To acquire money through a loan or expend money by way of a loan on any conditions and against proper security being furnished where money is expended by way of a loan;

8.1.9. To encumber any assets of the Trust by way of a bond, pledge, hypothec or session as security;

8.1.10. To perform all acts on behalf of the Trust which may be necessary to effect transfer of any assets of the Trust;

8.1.11. To grant extensions for the complying with any duty towards the

Trust, to reach compromises and oppose claims against the Trust, to recognise, and settle same_and to handle any claims in favour of the Trust in the same manner;

8.1.12. To employ people to perform any act and to remunerate them from the assets or income of the Trust. The possibility that the TRUSTEE would have been able to perform such act himself does not detract from the aforementioned entitlement;

8.1.13. To utilise the assets and income of the Trust in such a manner as the TRUSTEE may deem proper for the conservation, maintenance or replacement of any assets of the Trust and to demolish any buildings if deemed appropriate by the TRUSTEE to erect new buildings on the fixed property of the Trust;

8.1.14. To exercise his voting right as deemed appropriate, with regard to any shares which belong to the Trust and are held in any company or society. The exercise of his discretion and authority hereunder is not reduced where he directly or indirectly has an interest in such company or society neither will such TRUSTEE due to his confidential relationship with the Trust be obliged to give account of any benefit, which accrues to him due to such interest either directly or indirectly, nor is any act, agreement or deed of the TRUSTEE void or voidable on the ground that he received such benefit. The object of this clause is to avoid that the consequences of voidability or voidness due to the confidential office of the TRUSTEE will supervene and insofar as it may affect agreements and relationships with companies and societies in which the TRUSTEE has a personal interest;

8.1.15. To lend money to any person or legal entity on such conditions as he in his absolute discretion may stipulate on the condition that proper security is provided by the lender;

8.1.16. To enter into insurance contracts and to pay the premiums from the

assets of the Trust;

8.1.17. To pay the debts of the Trust;

8.1.18. To accept or refuse donations and inheritances to the Trust;

8.1.19. To open a bank account and to borrow money from a bank on the overdraft facility or otherwise;

8.2. Notwithstanding the stipulations of paragraph 5.1 or any other paragraph in this Deed, the TRUSTEE will not be entitled to dispose of any assets or income of the Trust for his own benefit or the benefit of his or any other person's estate. Without detracting from the generality of the aforementioned he will specifically not be entitled or authorised to appropriate or to dispose of any of the assets or income of the Trust as his own, as he deems fit, If he by doing so will benefit himself or his estate directly or indirectly. The TRUSTEE will furthermore not be authorised to use or consume any of the assets of the Trust directly or indirectly, for his own benefit unless so authorised by the Master of the High Court of South Africa;

8.3. If the Trust shows drastic growth and if the administration thereof requires it, the TRUSTEE will be entitled to employ a person or persons, full time or part time, to assist with the administration of the Trust and in this respect he will be entitled to pay a reasonable salary or remuneration, which he in his discretion deems appropriate, to such a person or persons. Control and care over the Trust's assets shall always be the responsibility of the TRUSTEE including fixed property or a bond with regards to any place in the Republic of South Africa. In this regard the only limitation is that investments may only be made within the borders of the Republic of South Africa unless ordered otherwise by the Court.

9. **BOOKKEEPING**

9.1. The TRUSTEE shall keep a complete set of accounting records with regard to

the affairs of the Trust;

- 9.2. TRUSTEE will ensure that the accounting records of the Trust are audited by a chartered accountant and that such accountant will have free access to the books, documentation and assets of the Trust.

10. APPLICATION OF INCOME

The TRUSTEE will use the income of the Trust to pay the administration costs for the administration of the Trust and to realise the objectives of the Trust.

11. DUTIES OF THE TRUSTEE

The TRUSTEE shall:-

- 11.1. As far as possible endeavour to realise the objectives of the Trust;
- 11.2. To open a current account with a registered commercial bank of his choice, which account will be used for the receipt of all cash which is paid to the Trust;
- 11.3. To invest and reinvest the funds of the Trust in such a manner as he may deem fit in shares, securities or any assets of whatsoever nature including fixed property or on bond in any place in the Republic of South Africa and in this respect the only limitation is that investments may only be made within the borders of the Republic of South Africa unless ordered otherwise by the Court;
- 11.4. To amend, regroup or reinvest the investments in such a manner and on such conditions and for such objectives as the TRUSTEE in his sole discretion may deem appropriate;
- 11.5. To see to it that proper minutes of all decisions made by him, are kept in a safe place;

- 11.6. To see to it that the financial statements of the Trust for each year are kept in safe custody for the period of the existence of the Trust;
- 11.7. To see to it that all contracts are fulfilled;
- 11.8. To make all payments that may be payable on the income of the Trust;
- 11.9. No amendment to the Trust Deed may be made without the consent of the court;
- 11.10. To see to it that the set of books that he shall open and keep will immediately become operational and at the same time appoint a firm of auditors for the Trust as soon as the Master of the High Court has registered this Deed;
- 11.11. To see to it that the firm of auditors that is appointed for the Trust will at all times have free access to the books and accounts and vouchers of the Trust and he further undertakes to obtain such information as the auditors may require and to make same available to the firm of auditors and if explanations are required, to provide same.
- 11.12. To submit a report to the Master annually regarding the financial position of the Trust, investments made and on all other aspects required as if he was appointed as a *Curator bonis* for M ANTHONY.
- 11.13. To disclose to M ANTHONY upon request and in his annual report to the Master any benefit gained by him arising from any investment of the cash assets of the Trust other than his remuneration on Income as provided for herein.

12. APPOINTMENT OF THE TRUSTEES

The following people will be disqualified to act as TRUSTEE of this Trust:-

- 12.1. Any person who is disqualified to act as a director of a company in terms of the stipulations of the relevant Company Laws of the Republic of South Africa;
- 12.2. Any person who is an unrehabilitated insolvent;
- 12.3. Any person who has previously been removed as a TRUSTEE from a trust due to his/her misadministration of the said Trust;
- 12.4. Any person who has previously been found guilty, in the Republic of South Africa or elsewhere, of theft, fraud, forgery, perjury, corruption or any misconduct or offence where dishonesty was an element of and resulted in that person being found guilty;
- 12.5. Any person who has been declared mentally ill or incapable of managing his/her own affairs.

13. TERMINATION OF THE TRUST

The Trust will be terminated when the mentioned M ANTHONY passes away or when the Master of the High Court of South Africa or a competent Court orders it so, whichever event may happen first.

14. DISSOLUTION OF THE TRUST

With termination of the Trust as a result of the death of M ANTHONY, the Trust will be liquidated and the capital will after all the administrative costs and debts as well as claims against the Trust have been paid, be allocated according to the stipulations of the will of the mentioned M ANTHONY and If the mentioned M ANTHONY dies intestate, the net assets of the Trust will be divided equally between her intestate heirs in accordance with the relevant Intestate Succession Act that is applicable in the Republic of South Africa. If the Trust is terminated by Order of the Master of the High Court of South Africa, the funds will be paid out in accordance with the stipulations of such order.

15. EXEMPTIONS

With regard to the aforementioned the following exemptions will be applicable:-

- 15.1. No TRUSTEE will be incapable due to his/her office as TRUSTEE of this Trust, to enter into a contract with the Trust or any company in which the Trust has an interest. Furthermore any contract entered into between the Trust and such company will not be void due to the Trustee's interest in the company. The only requirement with regard hereto, is that the TRUSTEE shall before any negotiations are entered into, disclose his/her interest in the contract or entity, to the Master of the High Court of South Africa before such negotiations take place;
- 15.2. Any TRUSTEE, who is a member of or a partner in a firm of professional practitioners, may be employed by the Trust or render services for the Trust and in such instance the TRUSTEE will be entitled to a fee in his/her professional capacity;
- 15.3. The TRUSTEE shall bear the responsibility and liability for his acts or omissions where he fails to show the degree of care, diligence and skill as required as determined in the Trust Property Control Act, 57 of 1988.
- 15.4. No TRUSTEE will be liable for any dishonesty or wrongful act committed by *any* of the other TRUSTEES unless such a TRUSTEE had knowledge thereof and allowed such dishonest acts or acted as an accessory, or could have prevented such act but negligently failed to do so;
- 15.5. The TRUSTEE shall be indemnified out of the assets of the Trust with regards to any claims that may be instituted against him/her personally and which result from the reasonable acts of the TRUSTEE and the exercise of any of his/her competencies which he/she is entitled to exercise in terms of this Deed;

16. **REMUNERATION**

If the TRUSTEE is a professional person, he/she will be entitled to his/her reasonable professional fees for any professional work done for the Trust. Such fees will include any fees that are reasonably payable to his/her partners and he/she will further be entitled to make use of the services of other similar professional people as also auditors, medical doctors, attorneys and advocates. With regard to services rendered by the TRUSTEE for the general administration of the Trust and arrangements which he/she will make with regard to the care of the mentioned M ANTHONY, the TRUSTEE will be entitled to a yearly fee as stipulated in the relevant legislation of the Republic of South Africa pertaining to a *Curator bonis*.

17. **MARRIAGE**

All the benefits that M ANTHONY is entitled to in terms of this Deed of Trust are for all purposes excluded from any community of property or any community of profit and loss. The accrual system in terms of the Matrimonial Property Act 88 of 1984 is not applicable to any benefit hereunder. It may not be seized for the debts or liabilities of any spouse of MORNIOUE ANTHONY and may not form part of any insolvent estate of such a spouse or vest in the curator of such insolvent estate.

18. **ACCEPTANCE**

The TRUSTEE hereby accepts the donation made to him according to this Deed subject to the conditions of this Deed and further undertakes to realise the objectives of this Trust Deed.

SIGNED at PRETORIA on this the _____ day of APRIL 2015.

AS WITNESSES:

1. _____

2.

DONOR

SIGNED at PRETORIA on this the _____ day of APRIL 2015

AS WITNESSES:

1. _____

TRUSTEE

2. _____

ANNEXURE "B"

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NUMBER: 27454/2013

In the matter between:

M ANTHONY

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

CONSENT

I, the undersigned,

CONSTANT WILSNACH

do hereby consent to act as Trustee to **M ANTHONY** should the above Honourable Court deem fit to appoint me as such.

DATED at PRETORIA on the 20th of April 2015.

AS WITNESSES

1. _____

CONSTANT WILSNACH

2. _____