THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 685/2018

Reportable

In the matter between:

WITZENBERG MUNICIPALITY	**APPELLANT**
and	
MURRAY JOHN MARTIN BRIDGMAN NO	**FIRST RESPONDENT**
JACK JACOBUS NICOLAAS LOUW	**SECOND RESPONDENT**
ELSABE CORNELIA ELIZABETH LOUW	**THIRD RESPONDENT**

Neutral Citation: *Witzenberg Municipality v Bridgman NO & others* (685/2018) [2019] ZASCA 186 (3 December 2019).

Coram: Navsa, Mbha, Zondi and Van der Merwe JJA and Hughes AJA

Heard: 15 November 2019

Delivered: 3 December 2019

Summary: Application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 of a refusal of petition decided in terms of s 17(2)*(d)* of that Act – whether petition correctly refused – whether reasonable prospects that another court could come to a different conclusion concerning the negligence of Municipality that operated a resort at which a resident was raped – whether Municipality ought to have guarded against the harm that eventuated – whether foreseeable.

Appeal against quantum of award of damages – amount awarded greater than amount sought – whether amount awarded excessive.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Donen AJ sitting as court of first instance): reported *sub nom Bridgman NO v Witzenberg Municipality (J L & another intervening)* 2017 (3) SA 435 (WCC).

1 The application for a reconsideration of the refusal of the application for leave to appeal is dismissed with costs, including the costs of two counsel where so employed.

2 The appeal against the quantum of the award of damages succeeds to the extent reflected in the substituted order that appears hereafter.

3 Paragraph 226.1 of the order of the court below is set aside and substituted as follows: 'The Municipality shall pay damages to the plaintiff in the sum of R630 780, together with interest thereon from date of judgment.'

4 In respect of the appeal against the quantum of damages no order is made as to costs.

JUDGMENT

Navsa JA (Mbha, Zondi and Van der Merwe JJA and Hughes AJA concurring):

[1] This is a reconsideration of a refusal of an application for leave to appeal, referred to this court in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the Act), coupled with an appeal against the quantum of an award of damages. As will become apparent, the two are related. The underlying facts in relation to both constitute a terrible tale of woe, yet demonstrate human resilience. The history of the person at the centre of the litigation, up until the traumatic event on which the litigation was based, is telescoped in the paragraphs that follow. For reasons that will become clear, she will be referred to throughout only as Miss L. The necessary further details leading up to the present appeal will be dealt with thereafter.

[2] Miss L was born in Bulgaria. Her date of birth is uncertain. It appears that immediately after her birth her mother gave her up for adoption. Miss L was initially placed in a children's home and thereafter transferred to a state-run institution for disabled

children. This was on account of her slow cognitive and neurological development. When she was approximately five months old she was diagnosed with spastic hemiparesis in her lower limbs and also suffered from other chronic illnesses. There was little, if any, hope of significant progress in the development of her human potential. The officials at the institution did not expect her to live. Then a ray of hope presented itself in the form of a South African couple, Mr and Mrs L, who were Christian missionaries stationed in Sofia, Bulgaria's capital city. They first met her in 1998, visited her regularly and saw in her the capacity for development. She was later admitted to the State University hospital in Sofia. At that stage she was in a badly neglected condition, passive and apathetic. Her head was shaven and her impermanent teeth were all decayed. She had no spontaneity of movement, could not communicate verbally and could not crawl, roll or perform any significant movements.

[3] In 1999 Mr and Mrs L were granted permission to transport Miss L to South Africa on a hospital permit for a year. Here they arranged for her to see a range of professionals. Mr and Mrs L arranged for the removal of her decayed teeth. She underwent physiotherapy and attended numerous occupational therapy sessions. Miss L was also given speech therapy. After months of treatment she began to walk when held by the hand. She started showing signs of meaningful verbal communication and was able to draw shapes and colour-in. Miss L returned to Sofia and Mr and Mrs L were given instructions on how to assist her there to promote her further development.

[4] Mr and Mrs L and Miss L visited South Africa annually and the adults saw to it that she attended further therapy sessions here. Her development continued and she showed remarkable progress due, in large part, to the efforts of an early childhood intervention specialist. Mr and Mrs L formally adopted Miss L in 2001. Before the event that led to the litigation culminating in these proceedings, Miss L had developed to such an extent that she was able to play on her own and with other children in the street and parks. She had developed into a good football player and was beginning to read. Her adoptive parents had received professional advice that they should promote her independence which, in turn, they were informed, would build her confidence. It is common cause that Miss L is

mildly intellectually impaired. At the time of the incident in question she had reading and numeracy skills at about Grade one level and the cognitive level of a seven to eight year old child.

[5] On 16 January 2009 Miss L, her adoptive parents and their biological daughter Miss Z, registered and were admitted as residential guests at the Pine Forest Resort, Ceres (the resort). Miss L was approximately 18 years old at the time. The resort is owned and controlled by the Witzenberg Municipality (the Municipality), the applicant in the application for reconsideration and also the appellant in the appeal against quantum. The Municipality was established in terms of s 12 of the Municipal Structures Act 117 of 1998. Its area of jurisdiction comprises the small towns of Wolseley, Ceres, Tulbach, Prince Alfred's Hamlet and Op die Berg, in the Western Cape Province. Mr and Mrs L had visited and had been guests at the resort a number of times over the years preceding this last visit.

[6] On 20 January 2009, which proved to be a fateful day, Miss L asked her adoptive parents whether she could go out and play on her own in the playground close to their unit at the resort. She was given permission to do so. This was in line with the advice they had received that they should encourage her independence. Whilst at the playground she was forcefully and physically led away by three minors who had gained access to the resort, aged 15, 14 and 11, respectively, up an external staircase leading to the entrance of a squash court within the resort, down an internal staircase to the floor of a squash court where she was brutally sexually assaulted and raped. The squash court formed part of a recreational hall. It is close to the play area which is equipped with swings, a trampoline and other equipment. It is also close to a fenced-off swimming pool. One of the boys apparently kept a lookout while the other two were actively involved in the sexual assault on her. The attack and its effect on Miss L must be seen against her history, including her past sensory deprivation by not being held and nurtured as a small child and her intellectual and emotional impairments. The two boys who actively participated in the rape were convicted and sentenced accordingly.

[7] Sometime after the attack, a curator *ad litem*, the first respondent in the present case, appointed by the Western Cape High Court on 20 December 2011, instituted an action in that court against the Municipality, claiming damages on Miss L's behalf flowing from the attack on her, on the basis of the negligence of its employees and / or officials. The following are the relevant parts of the particulars of claim:

'The sexual assault and rape of [Miss L] was caused by the lack of ordinary care and diligence of the Defendant and its servants who acted in the course and scope of their employment with the former and who were negligent in one or more of the following respects:

(a) they failed to employ a competent, reliable and trustworthy security firm at the Resort;

(b) in breach of the Resort's General Information and Rules referred to in paragraph 5 above, [P] and [O] were admitted as day visitors to the Resort without advance reservation;

(c) in breach of the Defendant's General rules for its Resorts and Swimming Pools referred to paragraph 6 above, [P] and [O] as day visitors were not restricted to the Resort's allocated area, which excluded the Resort's squash courts;

(d) in breach of the Defendant's By-Law referred to in paragraph 7 above, [P] and [O] were admitted to the Resort without admission tickets;

(e) in scheduling a meeting at 4 pm on 20th January, 2009 at the City Hall, Ceres which all the Defendant's servants at the Resort, with one exception, had to attend;

(f) accordingly after 4 pm on 20th January, 2009 leaving the Resort effectively under the control of an inadequate, incompetent, unreliable and non-trustworthy security firm, which inter alia failed: to patrol the Resort; and monitor the movements of [P] and [O] adequately or at all.'

The references to P and O are to two of the three minors who were involved in the attack on Miss L.

[8] The Municipality defended the action. First, it denied that it owed Miss L a legal duty to take steps, other than those that were in place at the resort at the time. Second, in the event that the court held that it ought to have taken certain steps to protect visitors to the resort, it denied that the failure to take such steps caused the attack and led to the injuries consequently sustained by Miss L. In addition, the Municipality issued a third party notice, in terms of which it sought to lay the basis for a claim for a contribution or indemnification by Mr and Mrs L. The Municipality averred that in the event of judgment being granted in favour of the first respondent, in his representative capacity, and in the

event of it being ordered to pay damages it would be entitled to claim a contribution from Mr and Mrs L on the basis that they as her adoptive parents, aware of her mental disability, were themselves negligent in several respects, namely:

'The Third Parties, as [Miss L's] adoptive parents, . . . therefore had a duty of care towards [Miss L]. The alleged damages were caused by the lack of ordinary care and diligence of the Third Parties, who at all relevant times were and / or should have been acutely aware of [Miss L's] severe mental disability and who were negligent and / or breached their said duty of care in one or more of the following respects, in that the Third Parties:

Failed to properly supervise [Miss L] while playing alone in the resort;

Failed to exercise reasonable care and / or take adequate steps to prevent ham to [Miss L] when they could and / or should have done so;

Failed to adequately monitor the movements of [Miss L] at all relevant times prior to, during and subsequent the alleged assault;

Allowed [Miss L] to stray from their control and / or area of supervision whilst being acutely aware of her mental disability and consequential vulnerability and / or exploitability;

Failed to avoid the incident where by the exercise of reasonable care and measures, they could and should have done so.

As a result of the aforesaid facts and circumstances the Third Parties owed to [Miss L] a duty of care to prevent a foreseeable harm as suffered by her and to take reasonable steps to prevent *inter alia* the assault from occurring and / or were negligent in one or more of the respects as listed in paragraph 9.2.1 – 9.2.5.

In the light of the aforementioned, the Third Parties should be jointly and severally liable with the Defendant to the Plaintiff, if successful.'

[9] Mr and Mrs L opposed the relief sought against them and denied that they were negligent as alleged by the Municipality and consequently that they were legally obliged to make any contribution at all. The matter proceeded to trial with evidence adduced by all the parties. The court heard, inter alia, the evidence of Mrs L, experts who treated Miss L before the event in question and who saw her thereafter, and security consultants who testified in support of the respondents' case and in support of the Municipality.

[10] The further material parts of the evidence adduced and the relevant common cause facts are set out hereafter. Very soon after the attack on Miss L, the Mayor and the

Municipality's manager arrived at the resort. The Mayor expressed his regret at what had occurred and stated that he was aware of prior security lapses at the resort and that he was busy with a program that was directed at keeping the youth in Ceres from participating in criminal conduct.

[11] Ceres Alarms, the security services provider at the resort at the time of the incident in question, had been appointed on an emergency basis after a predecessor's contract had been summarily terminated for poor performance. Ceres Alarms had been appointed in the absence of a thorough security assessment by the Municipality. The Municipality's own internal communications show that there had been an ongoing concern by its officials about the lack of adequate security at many of its facilities, including the resort. There had been reported incidents of break-ins at the resort and an incident involving a complaint of assault after an argument, apparently between two residents. The Municipality's own documents show a concern by officials of the threat of some greater harm than that which had already been experienced. Furthermore, at the time of the incident the entire municipal staff at the resort, 18 out of 19 staff members, had left the resort to attend a staff meeting. The remaining member of staff was a cashier. The staff that attended the meeting away from the resort included, amongst others, the swimming pool manager and other supervisory staff.

[12] The number of security guards employed by Ceres Alarms in attendance at the resort at the time of the incident was limited to two, in the face of the Municipality's own stated technical requirements that at least four guards were required, with at least two needed to patrol the grounds within the resort on an hourly basis. Statements made by employees of Ceres Alarms were referred to, in which they appreciated that four guards were necessary as part of a security detail at the resort and they themselves were puzzled that they had been left with half that number.

[13] Moreover, the evidence on behalf of the first respondent that squash courts were locations of choice for wrongdoing was uncontested. A lock or supervised access to the squash court was obviously what was called for. That was lacking. No evidence was

tendered on behalf of the Municipality that there were budgetary constraints in relation to any one of the aspects set out in this and the preceding paragraph. It is necessary to record that the following appears at the foot of a printed document containing the resort's 'general information and rules':

'Please take note that the resort gates will close at 23:00 and reopen at 07:00 to ensure the safety and good order in the resort. Security staff will concentrate on patrolling . . . .'

[14] In relation to the damages sustained by Miss L, her history set out above, and the evidence adduced at the trial, described in this and the paragraphs that follow, are material. Mrs L testified that when she approached the squash court in search of Miss L, after she had noticed that she was no longer in the playground, she heard her crying, pleading with the boys to stop. She saw the boys flee after being alerted of her presence. Soon thereafter, Miss L came towards Mrs L, pulling up her panties, repeatedly saying the words: 'It's very bad'. Her underwear and pants were blood-stained. She was later seen by a doctor who examined her. DNA linked to one of the boys who was part of the assault on her was discovered on her body. Curiously and infuriatingly for Mr and Mrs L, and insensitively, the Municipality waited until the trial had been conducted for a few days before an admission was made that Miss L had been raped.

[15] When her adoptive parents arranged for Miss L to see a gynaecologist, approximately two weeks after the incident, she was still in an obviously traumatised state and did not want to be touched or have her clothes removed and the examination could only be conducted under general anaesthetic. The gynaecologist detected three tears in her vaginal area, with the largest still bleeding.

[16] Clearly influenced by her Christian upbringing, Miss L informed her adoptive mother that she had experienced the assault on her as one of being 'crossed', which in all probability was a reference to the Crucifixion. This was seen by the court below as an important feature in assessing the pain and suffering that she had endured. She had explained to her adoptive mother how she was taken by the arm by the three boys and pulled away from the trampoline and despite struggling to get away she was taken to the

squash courts with her hands behind her back and a hand over her mouth. The court below also took into account the sensory neglect Miss L had endured over her formative years and that she was thus extremely sensitive to touch.

[17] The court below, understandably, admitted the evidence of the reports by Miss L to others, supported by the objective evidence and the evidence of others, thus avoiding the trauma for Miss L of reliving her ordeal in court.

[18] Mrs L testified about how Miss L, upon her return to Bulgaria after her ordeal, showed a marked change. She became afraid of teenage boys and there was regression in her development. She demonstrated an aversion to playing outside and her home education program suffered a setback. It is quite clear on the evidence adduced that Miss L was set back by a year in her cognitive and emotional development because of the brutal attack on her.

[19] It is also apparent that as a result of the attack on her Miss L suffered from Post-Traumatic Stress Disorder (PTSD) for an extended period of three years. At the time of and following upon the attack on her, Miss L suffered acute shock and stress. Thereafter she re-experienced the traumatic event in the form of recurring intrusive nightmares or intense emotional or psychological reactions to reminders of the event. She withdrew socially and had difficulty concentrating. She had difficulty sleeping, showed poor tolerance of stress and was hyper-vigilant. Miss L regressed in her language skills and soiled herself for a while. She was generally anxious and reluctant to separate from her parents. By the time of the trial in the court below, approximately seven years after the incident, she still had residual symptoms of PTSD. She still displayed distressing symptoms and still occasionally suffered nightmares and continued to experience problems in concentration. She had, however, recovered a degree of confidence and was once again making headway with an assertion of independence. Simply put, she is on the mend, which is a tribute to her fortitude and demonstrates a triumph of the human spirit.

[20] The judgment of the court below is reported *sub nom Bridgman NO v Witzenberg Municipality (J L & another intervening)* 2017 (3) SA 435 (WCC). It is 66 pages long and comprises 226 paragraphs. For present purposes, I will refer succinctly to the material parts.

[21] The court below held the Municipality liable for the damages sustained by Miss L. It rejected the claim for an indemnification or a contribution by Mr and Mrs L. The following order was made:

'The Municipality shall pay damages to the plaintiff in the amount of R780 780, together with interest thereon from date of judgment;

The Municipality shall also pay plaintiff's costs of suit, including the costs of the rule 21(4) application which stood over for later determination; such costs to include the costs incurred in the employment of two counsel.

The Municipality shall also pay the third parties' costs of suit.'

An application for leave to appeal against the merits was refused by the court below. It did, however, grant leave in relation to the amount of damages awarded to Miss L. An application for leave to appeal against the decision of the court below on the merits, in terms of s 17(2)*(b)* of the Act, was made to this court. That was refused. The Municipality then applied in terms of s 17(2)*(f)* for a reconsideration of that decision, which was referred to this court for hearing. It is that referral and the appeal against the amount of damages awarded to Miss L that are presently before us. It is to a consideration of those two matters that I now turn.

[22] Right at the outset of his judgment, Donen AJ recorded that it was the duty of the State to address the conditions that enable and continue to underlie gender-based violence. He referred to the constitutional rights to dignity and equality and to International Law. He also had regard to the United Nation's Convention on the Rights of People with Disabilities. In para 4 of the judgment, after recording that Miss L was raped on 20 January 2009 at the resort, which was owned, managed and controlled by the Municipality, part of the State and therefore bound to respect and promote Miss L's constitutional rights, he held as follows in relation to wrongfulness:

'Because of its constitutional duties, and because it owned, managed and controlled the resort in the circumstances described further below, the failure on the part of the Municipality to prevent the rape was unlawful.'[1]

[23] Donen AJ then went on to consider whether the Municipality owed Miss L a legal duty to have taken certain steps which would have prevented the attack on her and whether it negligently failed to do so. The court below had regard to the well-known test for negligence, formulated in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430:

'*(a)* a *diligens paterfamilias* in the position of the defendant –

(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrences; and

(b) the defendant failed to take such steps.

This had been constantly stated by this Court for some 50 years. Requirement *(a)*(ii) is sometimes overlooked. Whether a *diligens paterfamilias* in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of each case.'

[24] In essence, the court held that if there had been four guards in total with two guards doing hourly patrols and if the rest of the staff at the resort had been in place and if there had been proper access controls in relation to the squash court and more visible and pronounced access control, the opportunity for wrong-doing would have diminished and it was more likely than not that the rape would not have occurred. It had occurred because of the failure of the Municipality to take the steps outlined above. Moreover, in light of previous experiences, there ought to have been a greater awareness by the security service and the employees of the possibility of criminal conduct. Harm eventuating, in the absence of these measures, would have been foreseeable, particularly in the light of prior criminal conduct experienced at the resort coupled with municipal officials expressing concerns that criminal behaviour of a kind eclipsing those hitherto perpetrated might materialise. The court below concluded that the Municipality was negligent and liable to Miss L for the damages sustained by her.

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[1] *Bridgman NO v Witzenberg Municipality (J L & another intervening)* 2017 (3) SA 435 (WCC) at 440E-F.

[25] The submission on behalf of the Municipality, in relation to negligence, that harm specifically in the form of a rape could not have been foreseen by it, is misconceived. The precise nature of the harm need not be foreseen. The general nature of serious criminal conduct with attendant consequences is what ought to have been foreseen. In the present circumstances it ought to have been foreseen.[2]

[26] It was submitted on behalf of the Municipality that in holding that it was negligent, the court below placed too great an emphasis on the fact that it was part of the State. This submission, too, is fallacious. Even if one were to have considered whether liability based on negligence should attach to a private resort owner against the circumstances set out in paras 10-13 above, the same result would have ensued, namely, that the resort owner would have been held to be negligent. That conclusion becomes even more compelling if regard is had to the Municipality as part of the State. It was accepted on behalf of the Municipality that this factor is one to be taken into account. An organ of state is expected to 'take reasonable measures to advance the realisation of the rights in the Bill of Rights' and the availability of resources is an important factor when determining what steps were available to the organ of state and whether reasonable steps were in fact taken. It is therefore necessary for the organ of state to present information to the court so that it can assess the reasonableness of the conduct in proper context.[3] As stated above, no reliance was placed by the Municipality on budgetary constraints.

[27] It was contended on behalf of the Municipality, in relation to wrongfulness, that holding it liable would result in limitless liability and would place an intolerable burden on local authorities. In the circumstances outlined above and considering constitutional norms, that contention is entirely without substance.

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[2] See N Neethling and J M Potgieter *Law of Delict* 7 ed (2015) at 149; *Standard Chartered Bank of Canada v Nedperm Bank Ltd* 1994 (4) SA 747 (A) and the other authorities there cited. See also J R Midgley 'Delict' 15 *Lawsa* 3 ed at 341 and the authorities there cited.

[3] See *Lawsa* fn 2 at 313.

[28] The court below also held that no fault could be attributed to Miss L's adoptive parents in allowing her to play on her own in the play area in the resort. In this regard the court below, inter alia, considered her right to freedom of movement, her right to dignity which includes her right to assert her independence and the rights of disabled persons, recognised in international conventions. I find the attitude of the Municipality in this regard both baffling and disturbing. As stated in para 13 above, it gave comfort to residents that the Municipality was serious about security at the resort and that security staff would pay attention to patrolling the area. In running the resort, the Municipality bore a duty to take appropriate steps to safeguard to the best of its ability the safety of visitors and residents. This it did not do. In the circumstances referred to, it was adding insult to injury to attempt to land Mr and Mrs L with liability.

[29] In light of the findings set out above it follows that our colleagues who considered the application for leave to appeal in terms of s 17(2)*(b)* of the Act cannot be faulted for their conclusion that, on the merits, there were no reasonable prospects that another court would come to a different conclusion. The application for reconsideration therefore must fail.

[30] I turn now to deal with the appeal in relation to the quantum of damages, principally in relation to the question of whether the amount of R750 000 awarded for contumelia, shock, pain and suffering and loss of amenities of life was excessive. The court below had regard to the evidence set out in paragraphs 9-15 above. It considered it an aggravating factor that the Municipality delayed in admitting that the rape had occurred, raising the necessity of Miss L having to testify in the face of a professional warning that it would be traumatic for her to do so.

[31] The court below had regard to previous awards approximating the circumstances of the present case. It had regard to *F v Minister of S*afety *and Security & another* 2014 (6) SA 449 (WCC) in which a 13 year old girl was assaulted and raped by a policemen after he had offered her a lift home in a police vehicle. She had, in addition, been otherwise severely physically assaulted. As a result of the attack on her she suffered

PTSD and depression. She had been awarded an amount of R300 000 for contumelia and R200 000 for pain and suffering.

[32] Donen AJ went on to refer to the unreported judgment in *Nogqala v Minister of Safety and Security* ECG Case Number: 676/2011, delivered on 18 June 2012, in which a 22 year old woman was raped by a policeman in an office. She was awarded R225 000 in respect of damages for contumelia and R150 0000 pain and suffering. He also had regard to *M v Minister of Safety and Security* 2015 (2) SACR 28 (ECG) where a plaintiff, aged 25, was unlawfully arrested and detained by two police officials, and assaulted and raped by a police officer whilst she was in detention. A court awarded R425 000 in respect of contumelia in 2014. The court below took into account that the present day value of that award was R451 765.

[33] Before us it was contended on behalf of the Municipality that the amount of R750 000, awarded globularly by the court below was excessive. This was all the more apparent, so it was submitted, if one compares it to prior awards. It was pointed out that during final submissions in the court below, on behalf of the curator *ad litem* the maximum sought on behalf of Miss L was a total of R600 000. Before us counsel on behalf of the curator and Mr and Mrs L admitted that they were surprised when the amount awarded exceeded the amount sought.

[34] The trauma Miss L was subjected to, was horrific. She continues to endure the consequences of the brutal attack on her. The degree of pain, suffering, anxiety and loss of confidence she experienced was severe. Prior awards are useful but one will seldom, if ever, find a case on all fours with the one under consideration. However, the amount awarded is rather high. This is all the more so since it was not sought. In the light of all the circumstances the amount sought, namely, R600 000 appears to be fair and just. That being said we were concerned, in the event of a finding in favour of the Municipality on this aspect, that the curator should not be burdened with an adverse costs order. Fortunately the Municipality was prevailed upon, to consider, particularly in light of their prior conduct in the litigation to forego a costs order. The parties ultimately agreed that

there should be no order as to costs in respect of the appeal against the quantum of damages in the event of a finding in favour of the Municipality. A final aspect requires brief attention. The submission concerning the costs of the therapy sessions for Miss L's adoptive parents, namely that they should not have been awarded since they were not litigants in their own name, also falls to be rejected. The therapy sessions will not only benefit them but will ultimately have a beneficial impact on Miss L. The total amount awarded by the court below and the amount in the substituted order set out hereafter, includes the cost of those sessions.

[35] The following order is made:

1 The application for a reconsideration of the refusal of the application for leave to appeal is dismissed with costs, including the costs of two counsel where so employed.

2 The appeal against the quantum of the award of damages succeeds to the extent reflected in the substituted order that appears hereafter.

3 Paragraph 226.1 of the order of the court below is set aside and substituted as follows: 'The Municipality shall pay damages to the plaintiff in the sum of R630 780, together with interest thereon from date of judgment.'

4 In respect of the appeal against the quantum of damages no order is made as to costs.'

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MS NAVSA

JUDGE OF APPEAL

APPEARANCES:

FOR APPELLANT:	A De Villiers (with him L Wade)
	Instructed by:
	Regan Brown Inc, Cape Town
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