

SOUTH AFRICA / JUDGMENT

F.A.C and Another v Road Accident Fund (55375/2015) [2024] ZAGPPHC 1292 (27 November 2024)

[2024] ZAGPPHC 1292**COURT**

North Gauteng High Court, Pretoria

BEFORE

Mazibuko

CASE / FILE NUMBER

55375/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**SAFLII****Note: Certain**

personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII

Policy**REPUBLIC****OF SOUTH AFRICA****IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG DIVISION,****PRETORIA****CASE NO: 55375/2015****(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED: YES/NO****DATE: 27 November 2024****SIGNATURE**

In the matter between: F[...]
A[...]
C[...]
First Plaintiff
L[...] J[...] T[...] OBO
D[...]
A[...]
C[...]
Second Plaintiff
and
ROAD
ACCIDENT FUND
Defendant

JUDGMENT

Mazibuko AJ

- [1] The first plaintiff, F[...] A[...] C[...] (F[...]), in his capacity and the second plaintiff, L[...] J[...] T[...] (L[...]), in her representative capacity for her minor daughter D [...] A [...] C [...] (D), instituted an action for loss of support. The action arose as a result of the death of F[...] and D's biological father, A[...] F[...] C[...], a Mozambican national (the deceased), who was a passenger in a motor vehicle and died as a result of the injuries he sustained in the motor vehicle collision in November 2012.
- [2] The action was defended, and the defendant filed a plea and expert reports. On 16 October 2017, the defendant was ordered to pay 100% of F[...] and D's agreed-upon and/or proven damages.
- [3] Despite service of the notice of set down on the defendant on 6 June 2023 and the invitation for it to compile a joint practice note, no appearance was made on behalf of the defendant.
- [4] The matter came before me on the issue of quantum, the loss of support.
- [5] Both parties filed actuarial calculations. The court granted an order in terms of rule 38(2) of the Uniform Rules. The actuarial calculations were admitted into evidence without the court hearing the viva voce evidence of the actuaries.
- [6] It was submitted on behalf of F[...] and D, by Adv Viller, that at the time of death, the deceased was employed at San Contracting Services, earning a salary in the amount of R8 287.67 per month, a total of R99 452.00 per annum. He also referred the court to F[...] and D's Algorithm actuaries' (Algorithm) report. Algorithm considered the deceased's earnings at the time of death. They regarded inflation and opined that the deceased would have had an earnings value of approximately R182 640 per annum from 1 November 2014 up to age 63. The Algorithm actuarial report assumed two alternative scenarios: one based on dependency until age 18 and the other until age 21.

- [7] Conversely, the defendant's actuaries, NBC actuaries (NBC), submitted that the deceased's monthly earnings at the time of death were about R5 048.47, equalling R60 581.64 per annum, with a salary inflation increase up to a retirement age of 65 years. The NBC's actuarial calculations reflected the deceased as divorced and only had F[...] and D as the deceased's minor children.
- [8] At the time of their father's death, F[...] was about seven years old, and D was approximately three. According to Algorithm's report dated 30 August 2024, the deceased was married at his demise. In addition to F[...] and D, the deceased had four other minor children, the eldest born in 1996 and the youngest posthumously in 2013.
- [9] The notable disparity between the two actuarial calculations is their starting point regarding the deceased's monthly salary. NBC's calculations are only based on basic salary according to the employer's certificate, which is considered aggregate net earnings. The Algorithm's calculation regarded not only the basic salary but also the statement of earnings from Rand Mutual Assurance.
- [10] Considering both actuaries, I found the Algorithm report more substantial and inclusive of other potential dependants of the deceased. Further, they provided calculations for all his dependents. However, it is unclear why the dependents, including the wife of the deceased, had not considered instituting the loss of support all at once. To the extent that, at the time of calculations, the attorneys presented the details and information for the other dependents but seemingly lacked a mandate.
- [11] Given the postulated amounts, the fact that the deceased's dependents are primarily minors, as per the Algorithm report, and that they are Mozambican nationals. Alive to the fact that the issue of the other children was not canvassed in the pleadings, and the defendant's actuarial report had no considerations of the other potential dependants. I enquired from Adv Viller whether the other dependents were aware of the Algorithm report or were the other proceedings for their claim. Through the plaintiffs' attorneys, affidavits, among others, deposed to by Ms T[...], the mother of F[...] and D, that the other potential dependants in Mozambique were made aware of their possible claim with the defendant and the Algorithm's report.
- [12] It has been held that there may also be instances where the court may mero motu raise a question of law that emerges fully from the evidence and is necessary for the decision of the case. That is subject to the

proviso that no prejudice will be caused to any party by its being decided. Beyond that, it is for the parties to identify the dispute and for the court to determine that dispute and that dispute alone.[1]

- [13] Notwithstanding the specific disputes preferred before me, I could not find any prejudice to be suffered by the defendant regarding the enquiry I made regarding the other minor children of the deceased. Guarded by Fisher,[2] though, it might not make sense that in a simple matter of loss of support involving minor children who reside in another country, the other dependants would or may need to commence different proceedings for such a claim and incur costs that the defendant would bear.
- [14] However, they are not without recourse as they may claim directly with the defendant on the same evidence already provided through the Algorithm actuarial calculations. For these reasons, I accepted that their claim was not before the court, they may direct the same to the defendant, who would be at liberty to consider same as it would be deemed necessary.
- [15] Regarding the loss of support, it is trite that the quantum assessment concerns whether the deceased had a duty to support children until they reached the age of 18 or 21 and the appropriate contingency deduction to be applied.
- [16] In terms of section 17 of the Children's Act, a child becomes a major upon reaching the age of 18 years. However, a parent's duty to support a child does not cease when they reach a particular age; it usually does so when they become self-supporting. The majority is not the determining factor.[3]
- [17] Both actuaries reported on the capital value of the loss of financial support sustained by the dependents of the deceased following his death in November 2012. With the Algorithm report, regarding scenario 1, dependency is defined as being dependent until 18 years. Concerning F[...], they applied a 7 ½ % contingency deduction for past loss of support, equating to R148 818.00. For D, using a 7 ½ % contingency deduction for past and future loss of support, the total loss amounted to R231 131.
- [18] Regarding scenario 2, which is dependency until 21 years. Regarding F[...], Algorithm applied a 7 ½ % contingency deduction on the past loss of support, equating to R188 083.00. For D, using a 7 ½ % contingency deduction on the past and future loss of support, the total loss amounted to R256 572.
- [19] Given this, all the facts of the matter must play a role in reaching a just and equitable decision. Measuring compensation for loss of support is an exercise of judicial discretion in the interest of justice, considering the difference between the current position and the position that the minor child would have been in had the deceased not died.[4]
- [20] For two scenarios presented by Algorithm, in *Marine and Trade Insurance Co Ltd v Mariamah and Another*[5], the court had the following to say:
- ‘... At the time of the deceased's death, Puniasagran was 18 years old, and G[...] 17 years old. They were still at school, and the deceased was supporting them. The court a quo was, in my view, justified in acting on the assumption that the deceased would probably have continued to support his sons until they reached the age of 21.’

- [21] In light of what has been mentioned, the loss of support for F[...] and D until age 21 is sufficient.
- [22] Applying this principle to the common cause fact that the deceased was, at the time of his death, supporting the children, the court finds that the defendant is obligated to F[...] and D for damages in the sum of R444 655 to compensate for the loss of their father's support measured until age 21.
- [23] The amount of R 444 655 is computed as follows: R188 083 for F[...] and R256 572 for D.
- [24] The plaintiffs have been successful, and there is no reason why they should not be entitled to costs.
- [25] As a result, the following order is granted. Order:
- [25.1] The defendant shall pay the capital amount of R 444 655 (four hundred and forty-four thousand six hundred and fifty-five hundred rand) in full and final payment of F[...] and D's claim for past and future loss of support, which is R188 083 for F[...] and R256 572 for D, directly into:
- Name of account holder: Van Velden-Duffey Incorporated Name of Bank: ABSA Bank
- Account type: Trust account Branch code: 6[...]
- Account no: 0[...]
- Reference:M[...].
- [25.2] The defendant is afforded a period of 180 days from the date of the court order to effect payment of the capital amount and the taxed or agreed costs herein. The plaintiff shall be entitled to recover interest at the applicable rate of interest per annum on the capital amount calculated from fifteen calendar days after the date of the order to date of final payment and on the taxed or agreed costs from fifteen calendar days after the date of allocator or settlement.
- [25.3] The defendant is ordered to pay the plaintiff's costs of suit in respect of the issues of merits and quantum on the party and party High Court scale, which costs will include the costs of 18 October 2024 and shall not be limited to:
- [25.3.1] The costs of attending to the examinations, consultations, preparation and drafting of expert reports, addendum reports (if any) and obtaining the medico-legal reports of Mr Whittaker - Algorithm Actuaries.
- [25.3.2] All costs of Counsel on a party and party High Court Scale B, including but not limited to the preparation costs, appearance costs of 18 October 2024, costs of consultations, drafting of heads of argument and the costs of making this order an order of court.
- [25.3.3] The reasonable costs for preparation for trial for the instructing attorney and correspondent attorney.

[25.3.4] The plaintiff shall allow the defendant 180 calendar days to make payment of the taxed or agreed costs from the date of settlement or taxation thereof, whichever date is the earlier. The plaintiff will not be entitled to execute a writ against the defendant during this period.

N G M MAZIBUKO

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically, circulated to the parties' representatives via email, and uploaded to Case Lines.

Representation:

For the plaintiffs: Mr Viller Attorneys for the plaintiffs: Van Velden-Duffey Attorneys For the defendant: No appearance Attorneys for the defendant: State Attorney Pretoria Heard: 18 October 2024 Date of Judgment: 27 November 2024

[1] Fisher v Ramahlele & Others [2014] ZASCA 88; 2014(4) SA 614 (SCA);

[2014] 3 All SA 395 (SCA) paras 13-14.

[2] Ibid no.1 supra.

[3] Mfomadi and Another v Road Accident Fund (34221/06) [2012] ZAGPPHC 152 (3 August 2012), paragraph 30.

[4] RAF v Monani 2009 (4) SA 327 (SCA) at paragraphs 2-6.

[5] Marine And Trade Insurance Co Ltd v Mariamah And Another 1978 (3) SA 480 (AD) at paragraph 489B

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2024/1292.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/fac-and-another-v-road-unknown-topic-agpphc-2024>

Prepared on 11 October 2026 · Esheria