

SOUTH AFRICA / JUDGMENT

Gajoo and Another v Road Accident Fund (13128/2013) [2015] ZAGPPHC 927 (17 November 2015)

[2015] ZAGPPHC 927

COURT

North Gauteng High Court, Pretoria

BEFORE

Motepe

CASE / FILE NUMBER

13128/2013

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

Source record

REPUBLIC OF SOUTH
AFRICA
OFFICE OF THE CHIEF
JUSTICE
(GAUTENG DIVISION,
PRETORIA)
CASE NO: 13128/2013
17/11/2015

In the matter between: PR & VD
GAJOO Plaintiffs
And
ROAD ACCIDENT
FUND Defendant

JUDGMENT

MOTEPE AJ:

- [1] The first and second plaintiffs ("the plaintiffs") separately issued summons against the defendant. The two claims were then consolidated under case no: 13128/2013.
- [2] The plaintiffs are the parents of Neelan Premjith Gajoo ("the deceased") who died in a motor vehicle accident on 29 August 2009. The defendant has admitted the negligence of the insured driver and conceded liability in respect of the merits. The plaintiffs claim that the deceased had a duty to maintain them and was in fact maintaining them at an amount of

R5000.00 per month since he started working until his death and would have continued to do so had he not died. The defendant denies that the plaintiffs are indigent and that the deceased had a duty to support them.

- [3] The second plaintiff, Mrs Vinella Davi Gajoo ("Mrs Gajoo") testified on behalf of the plaintiffs. The first plaintiff, Mr Premjith Ramnath Gajoo ("Mr Gajoo") did not testify. I was informed that his evidence would have been similar to that of his wife. I was informed further that he is completely deaf.
- [4] The defendant did not call any witness. The evidence of the plaintiffs therefore remains largely uncontradicted. This however does not mean, as Mr Bisschoff appearing for the plaintiffs forcefully contended, that it is true and must therefore be accepted blindly by the Court. Innes CJ, as he then was, said the following in *Siffman v Kriel*:^[1]

"It does not follow, because evidence is uncontradicted, that therefore it is true. Otherwise the Court in cases where the defendant is in default, would be bound to accept any evidence the plaintiff might tender. The story told by the person on whom the onus rests may be so improbable as not to discharge it."

- [5] The evidence of Mrs Gajoo was briefly that she is 59 years old and her husband 68. She has never worked in her life. Her husband, Mr Gajoo was a mechanic, supporting her and their three children. However, 20 years ago one of his eardrums burst and he became totally deaf. He could not work thereafter and had to sit at home. He has consequently not worked for the past 20 years.
- [6] When he stopped working, their two eldest sons were in High School while the daughter was in Primary School. He started receiving a disability of R1100.00 per month.
- [7] When the deceased finished matric, he started taking care of them. He started working at Iscor in Newcastle. He got married and later divorced. According to her, in terms Hindu faith to which the family subscribes, it is their custom that when a son gets married, he brings his wife into the house. They then live together as one family unit. The deceased maintained them monthly by giving her R5000.00 per month. There were months when it was more than R5000.00 but never less. He so maintained them when he started working, before getting married and even after getting married. He later divorced but continued giving them the same amount of money monthly.
- [8] When the deceased died, he was no longer living with them. He was working at Autopart Distributors at Jeppesstown, Johannesburg. He was therefore living in Gauteng while they remained at Newcastle. The plaintiffs' remaining son is 38 years old and is working. Their daughter is also employed. From what I can see from the employment certificates produced by the plaintiffs (some portions are not clearly legible), the deceased earned as follows:

Year Basic Gross salary Overtime (average) Bonus/allowance Commission 2006 R398 893.85
R4838.56 R3057.25 R17639.86 2007 R45 996.70 R2191.19 R5221.83 R39271.41 2008 R51 177.24
R6488.60 R7013.22 R63308.20 2009 R42 400.55 R7552.96 R4546.34 R55625.67

- [9] For the last three years, the deceased was, as Mr Bisshoff contended in his heads, "averaging out a monthly income of R7, 721.76, R10, 665.61 and R9, 184.28 for each of these years respectively" .
- [10] It was not suggested in evidence that the deceased had any source of income other than his employment at Autopart Distributors at the time of his death. I accept therefore that this was his only income.
- [11] If the evidence of Mrs Gajoo is to be believed, it would mean that when the deceased's average monthly income was R7, 721.76. He would give RS 000.00 to the plaintiffs, remaining with only R2, 721. 76. He would have to survive on this income for the whole month. Bearing in mind that he was no longer living with the plaintiffs at that stage, one can only assume that he had to get himself accommodation, buy food and clothing and other usual living expenses. I find it improbable that the deceased would give the plaintiffs RS 000.00 and more per month under these circumstances, even when he was earning over R10 000.00 a month.
- [12] In her testimony, she testified that in terms of their Hindu custom, it would not have been tolerated if the deceased was not contributing to their maintenance. When I posed a question to her as to why his surviving son is not bound by the same Hindu custom, she testified that he and their daughter have their own commitments but help whenever they can.
- [13] In my view, the same Hindu customs that bound the deceased to maintain his parents would bind the surviving son and the daughter to also maintain the plaintiffs. In addition, and even though no evidence was tendered, I cannot accept that Mr Gajoos' disability grant has remained at R1100.00 per month for the past 20 years. Surely there would have been an increased. Furthermore, and even if there was no evidence on this aspect, the Court can take Judicial Notice that in a year, Mrs Gajoo would qualify for state pension when she turns 60.
- [14] In *Smith v Mutual and Federal Insurance Co Ltd*, [2] the Court had the following to say:
- "In order to prove indigence, a stringent criterion of need has to be established. Furthermore, when regard is had to the circumstances of the matter, particularly in a case such as this where the defendant is not able to challenge or contradict any of the testimony which the plaintiff tenders, the obligation upon the plaintiff to place all evidence before the court which would enable it to evaluate the evidence as a whole to determine whether the plaintiff has discharged the onus it bears becomes greater" .

- [15] In my view, the plaintiffs have not placed all the evidence before the Court to enable it to evaluate the evidence as a whole. It has consequently failed to discharge its onus. On the contrary, the evidence before Court suggest that the plaintiffs' circumstances are not as dire. They only have themselves to support and have a son and a daughter who assist whenever they can, as the deceased would have. As already stated above, Mrs Gajoo will soon qualify for state pension.
- [16] Much was made by Mr Bisshoff about the failure by the defendant to call the assessor who conducted investigation on its behalf. I was urged to draw a negative inference against the defendant. The suggestion was that the assessor's report might have supported the case of the plaintiffs. I do not agree.
- [17] As recognised by our Courts,[3] in matters such as these, it is difficult for the defendant to contradict the evidence of the plaintiff. As Mrs Gajoo testified, the assessor did interview her and other family members. It is probable that they would have told him exactly what she has told the Court. It will be unfair under those circumstances to then draw a negative inference against the defendant for not calling the assessor.
- [18] To succeed in their claim, the plaintiffs had to prove on a balance of probabilities that they were indigent and could not support themselves, in addition, that the deceased was able to contribute or provide or did in fact contribute or provide the required support.[4] Being indigent means to be in extreme need or want whereas to be poor means having few things or nothing. The plaintiffs had to prove more, they had to prove that there is an extreme need or want for the basic necessities of life.[5]
- [19] In the premises, I find that the plaintiffs have failed to discharge the onus of proof to succeed in their claim. In my view, the proper order would be not to dismiss the plaintiffs' claim but to order absolution from the instance.
- [20] In the premises I make the following order:
- "Absolution from the instance is granted against the plaintiffs with costs."

JA Motepe

Acting Judge of the High Court

Matter heard on:

Judgment reserved on:

Counsel for the plaintiffs: Adv E Bisschoff

Attorneys for the plaintiffs: VAN ZYL LE ROUX INC

1st Floor, Block 3

Monument Office Park

Cnr Steenbok & Elephant Road

Pretoria

Ref: JBG/JP Robbertse/wvz/4131 15

Counsel for the defendant: Adv A Rasekgala

Attorneys for the defendant: TM CHAUKE INC

2nd Floor, Sammy Marks Square

314 Church Street

Ref: MEM/NVK/RAF/G050047

[1] 1909 TS 538 at 543

[2] 1998 (4) SA 626 (C) at 631H-I

[3] Smith v Mutual and Federal Insurance supra; Leask v RAF 2015 (5) SA 20 (GJ)

[4] Smith v Mutual Federal Insurance supra at 632C-D

[5] Smith v Mutual Federal Insurance supra at 632D-E

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/2015/927.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/gajoo-and-another-v-road-unknown-topic-agpphc-2015>

Prepared on 11 October 2026 · Esheria