

SOUTH AFRICA / JUDGMENT

Keet v Road Accident Fund (1657/2009)

[2010] ZANCHC 22 (11 June 2010)

[2010] ZANCHC 22**COURT**

Northern Cape High Court, Kimberley

BEFORE

Majiedt

CASE / FILE NUMBER

1657/2009

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IN THE HIGH COURT OF

SOUTH AFRICA

(Northern

Cape High Court, Kimberley)

Case

no: 1657/2009

Date

heard: 2010-06-04

Date

delivered: 2010-06-11

In

the matter between:

ELIZABETH

KEET PLAINTIFF

versus

ROAD

ACCIDENT FUND DEFENDANT

Coram:

MAJIEDT

J

JUDGMENT

MAJIEDT J:

The plaintiff instituted action for a dependant's claim on behalf of herself personally and on behalf of her two minor children. The claim is for loss of support due to the death of her husband and father of the two minor children ("the deceased") in a collision negligently caused by the insured driver.

The defendant conceded liability for the damages that the plaintiff may prove. This concession is contained in a minute of a pre-trial conference held on the second day allocated for hearing of the trial. In the pre-trial minute the contents of the medico-legal report of the plaintiff's industrial psychologist, Dr Richard Holmes, dated 11 April 2010 and the correctness of the deceased's income at the date of his death as reflected in that report was also admitted.

When the trial eventually commenced on the third and last day allocated for it, the defendant was unrepresented and I ordered the matter to proceed in the defendant's absence. It is necessary that I motivate that decision before I deal further with the merits of the plaintiff's action.

The plaintiff's action was defended throughout. On the first day of trial I was approached in chambers by the plaintiff's attorney and counsel and by a correspondent attorney acting for the defendant. I was informed in chambers that the parties are attempting a settlement of the disputes between them and that they required time to do so. I granted this request and on the following day the pre-trial conference which I had already alluded to was held. I was advised in chambers by the plaintiff's counsel and attorney and by the defendant's correspondent attorney that a full settlement of the matter was still being attempted. On the last day allocated to the matter approximately one hour before normal court time would expire, I was informed in chambers by the parties that they have not been able to settle the matter. Counsel briefed for the defendant advised me in chambers that her brief extended only to note a settlement in the matter or to seek a postponement should settlement negotiations fail. She advised me further that she had been instructed to move for a postponement, given the failure of the settlement negotiations. When the matter was called, such an application for postponement was brought on behalf of the defendant which I summarily refused. I ordered the plaintiff to proceed with her case.

The defendant had conceded that it was liable to compensate the plaintiff for her damages. The defendant had also admitted the contents of the medico-legal report of the plaintiff's industrial psychologist. The correctness of the deceased's income at the date of his death had also been admitted. It was further admitted in the pre-trial minute of 3 June 2010, that as a result of the death of the deceased, the plaintiff and the minor children had been deprived of the source of their maintenance. It was further common cause that the minor children were dependent on their deceased father for their maintenance and that the plaintiff as a housewife was similarly dependent on the deceased. In the circumstances, there were no issues remaining for adjudication. All that had to be determined was the period for which the deceased would have

been liable to maintain his minor children and the quantification of the amount of maintenance which the plaintiff in her personal capacity and in her representative capacity had been deprived of due to the death of the deceased. The latter was simply a mathematical exercise applying the usual contingencies and using the deceased's admitted income to be multiplied over the period of maintenance for the plaintiff and her minor children.

It seemed to me in the premises to be grossly unjust for the pecunious plaintiff who has to eke out an existence for herself and the minor children to be denied an opportunity to proceed with her case when there was nothing really in issue. A Court can under no circumstances countenance a situation where a defendant, who is statutorily obliged to compensate a plaintiff for damages arising from a motor vehicle accident, admits all the material elements of a dependant's claim and yet comes to court unprepared to proceed in an opposed action. For these reasons I had refused the postponement and ordered that the matter proceed. I may add that the plaintiff was ready to present her evidence from the very first day of the trial. The defendant on the other hand clearly took a calculated risk not to brief counsel in the hope that the matter will be settled. It has only itself to blame for its dilemma.

I turn to the merits of the matter. As stated above, very little remained for determination after the concessions made by the

defendant alluded to above. The plaintiff testified that she married the deceased on 29 November 2003. Two children were born from this union, namely a boy Charl Fabio Keet ("Charl"), born on 30 November 2001 and Charlize Esralize Keet ("Charlize"), a girl born on 7 June 2007. The deceased died in a motor vehicle accident on 8 March 2008. At the time they occupied a flat belonging to the mine for which the deceased had work at the time of his untimely death. Subsequent to the deceased's demise, they had to relocate to another flat which they rented. The plaintiff testified further that her only income was the proceeds from a provident fund of the deceased from which she receives R800 per month per child. She herself never worked, nor did she intend to work during the course of the marriage. She reared and cared for the minor children and ran the family's household. She testified about the children's future educational prospects and informed the Court that she and deceased had decided that the children had to receive post-school education at least until the age of 21. When I questioned her on this she indicated that the boy Charl, who is in grade 3, has passed every year thus far and that he is an average student.

Doctor Richard Holmes, an industrial psychologist, furnished a detailed report which was admitted by the defendant. The salient features of that report are as follows:

The deceased, as a qualified electrician employed in the mining industry would have, but for his untimely death, enjoyed excellent opportunities

for not only continued engagement as an artisan, but also for growth in the workplace. He would have consequently progressed

further beyond the position of a skilled artisan to that of technical specialist at a foreman or supervisor level.

The deceased would in all likelihood have retired at age 65 years.

The deceased earned the amount of R20 570.01 (gross) per month – this was common cause between the parties. This amount would, with application of the South African Consumer Price Index equate to a present day value of R23 655.50 per month (i.e. in 2010 terms). Based on information received from the deceased's employer, the deceased's hypothetical present day salary had the death not occurred, would have equated to R26 120.80 (gross) per month.

Applying the well-known Peromnes and Paterson job evaluation systems, Dr. Holmes set out the deceased's prospective career progression and concluded that the deceased would have proceeded in respect of his remuneration from a hypothetical remuneration package of R26 120,80 (gross) per month in 2010 terms referred to above at a 5% growth rate in real terms until obtaining the 75th percentile of the Peromnes 8/7/ Paterson C5-level at a gross annual remuneration of R468 740 as a senior supervisor

at retirement age.

As stated, Dr. Holmes' report was handed in by consent. I accept these conclusions and calculations, since they are premised on acceptable

bases and on reasonable conclusions. What remains therefore is to apply contingencies to these amounts and to arrive at a final sum which would have been allocated to the plaintiff as widow and to the children as minor dependants. In this regard I must make mention of the fact that plaintiff also placed before the Court a notice and summary in terms of Rule 36(9) of Dr. Robert Koch, an actuary. This report was however not admitted and I shall not have regard to it at all.

When computing a claim for loss of support one must bear in mind that the remedy is aimed at placing the deceased's dependants in as good a position regarding maintenance as they would have been if the deceased had not been killed. In this respect material losses as well as benefits and prospects must be considered.

See: Jameson's minors v CSAR 1908 TS 575 at 602.

In this calculation one would first assess the facts relevant to the annuity calculation namely:

- a) The period during which the dependants would have enjoyed the maintenance and support of which they have been deprived by the death of the deceased.
- b) What the deceased's nett annual income over that period would have been.
- c) How much of the deceased's nett annual would have been devoted to the maintenance and support of the dependants.

Once these facts have been determined the next step is to reduce the total amount of maintenance and support of which the dependants have been deprived (i.e. by multiplying the amount obtained under (c) above by the number of years obtained under (a) above) to its present day value. Once the figures have been calculated it must be adjusted in accordance with general equities and contingencies.

See in this regard generally: *Hulley v Cox* 1923 AD 234 at 243-4.

It was not disputed that the plaintiff would at all material times have remained a full-time housewife. I accept the plaintiff's evidence that the children, Charl and Charlize, would have remained dependent until the attainment of the age of 21. It has become a common method of division of a deceased breadwinner's income adopted by actuaries and by our courts to allocate equal shares of the deceased's income to each parent and half of such a share to each child.

See in this regard: *Boonzaaier v Provincial Insurance Company Corbett and Buchanan* The Quantum of Damages Vol 1 87.

Put differently, two parts of the income should be allocated to each parent and one part to each child.

In respect of contingencies 7.5% past and 15% future contingencies for the plaintiff are reasonable in the circumstances. In respect of the children Charl and Charlize, I apply 5% past and 10% future contingencies. In this regard I take into account that the children would only have been maintained until the age of 21 (the age at which they would have finished post-school studies), whereas the widow, the plaintiff, would have been maintained for a much longer period. The difference in contingencies applicable to the plaintiff and the minor children is therefore justified. In respect of re-marriage a generally accepted rate in respect of the Coloured population is a contingency of 14%.

See: 1988 De Rebus at 70.

In applying these contingencies the nett values of loss of support in respect of the dependants are therefore as follows:

In respect of the plaintiff the past loss of support would be R175 667, future loss of support R2 624 112 from which should be deducted general contingencies of R406 792 and in respect of re-marriage the amount of R330 638 should be deducted, leaving a nett value of R2 062 349.

In respect of the boy Charl the past loss of support is R87 834, future loss of support is R545 801 from which should be deducted a general contingencies of R58 972, leaving a nett value for the loss of support of R574 663.

In respect of the girl Charlize the past loss of support is R87 834, future loss of support R787 204 from which should be deducted general contingencies of R83 112 leaving a nett value for the loss of support of R791 926.

The total nett value of the loss of support is R3 428 938. Having made this assessment, I take into account the provisions of s1(1) of the Assessment of Damages Act, 9 of 1969, which reads as follows:

“When in any action, the cause of which arose after the commencement of this Act, damages are assessed for loss of support as a result of a person's death, no insurance money, pension or benefit which has been or will or may be paid as a result of the death, shall be taken into account.”

The plaintiff is therefore entitled to the aforementioned damages for loss of support on behalf of herself and her minor children.

Costs must follow the result and the following must be declared necessary witnesses, namely Mr. Opperman, an accident reconstruction expert, whose expertise was necessary in the merits until same were conceded on 3 June 2010 (i.e. on the second day allocated for the hearing) as well as that of Dr. Richard Holmes, the industrial psychologist and Dr. Robert Koch, the actuary.

The following order is issued:

The defendant is ordered to pay damages to the plaintiff in the sum of

R2 062 349.00 in her personal capacity;

R574 663.00 in her representative capacity as natural guardian and mother of Charl Fabio Keet;

R791 926.00 in her representative capacity as natural guardian and mother of Charlize Esralize Keet;

together with interest on the aforementioned amounts at the rate of 15.5% per annum from the day following the lapse of a period of 14 days from the date of the grant of this order until date of payment.

The defendant is ordered to pay the plaintiff's costs of suit together with interest thereon calculated at the rate of 15.5% per annum from a date 14 days after the allocatur to date of payment, such costs to include the costs

[17.2.1] attendant upon the obtaining of payment of the amounts referred to in par 17.1 above;

[17.2.2] the trial fees of plaintiff's legal representatives for three days;

[17.2.3] occasioned by the following expert witnesses: Mr RA Opperman, Dr. RG Holmes and Dr. RJ Koch.

SA MAJIEDT

JUDGE

FOR THE PLAINTIFF : Adv S Strydom

INSTRUCTED BY : Mjila & Partners, Kimberley

FOR THE PLAINTIFF : Adv L van Niekerk

INSTRUCTED BY : Engelsman Magabane Inc, Kimberley

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Prepared on 9 October 2026 · Esheria