

SOUTH AFRICA / JUDGMENT

Keforilwe v Road Accident Fund (281/13) [2015] ZANWHC 74 (12 November 2015)

[2015] ZANWHC 74**COURT**

North West High Court, Mafikeng

BEFORE

DJAJE

CASE / FILE NUMBER

281/13

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Source record**IN THE HIGH COURT****OF SOUTH AFRICA****NORTH****WEST PROVINCIAL DIVISION, MAHIKENG****CASE****NO: 281/13****In****the matter between:****KEFORILWE****ANNAH****Plaintiff****AND****ROAD****ACCIDENT****FUND****Defendant****DATE****OF HEARING****:****02 NOVEMBER 2015****DATE****OF JUDGMENT****:****12 NOVEMBER 2015****COUNSEL****FOR THE APPLICANT :****MR. MAGOLEGO****COUNSEL****FOR THE RESPONDENT :****ADV. TSHAUKE**

JUDGMENT

DJAJE AJ

[1] This is an action instituted against the Road Accident Fund (“RAF”) by the Plaintiff particularly for loss of support as the mother of the deceased. The merits have been conceded 100% in favour of the Plaintiff. The only issue in dispute is the quantum. In the particulars of claim the following damages were claimed:

1.1 Funeral expenses

R 17 510-00

1.2 Past and future loss of support R2 000 000-00

Total

R2 017 510-00

[2] During argument the total amount claimed by the Plaintiff was reduced and aligned to the amount appearing in the Plaintiff’s

actuarial report as R810 800-00 for loss of support. The Defendant has made an offer to pay the funeral expenses in the amount

of R17 510-00 which offer has been accepted.

[3] The Plaintiff testified that she is presently 43 years old and unemployed since at the time of the accident on 12 May 2013. Further that at the time of the death of her son(the deceased), who was then living at home with her and other siblings, the deceased contributed between R750-00 to R1000-00 per month from his income towards the maintenance of the Plaintiff. The deceased was also buying groceries in addition to the cash contribution. It was the testimony of the Plaintiff that she is married and her husband has never had permanent employment to contribute meaning fully to the household. Currently he is unemployed and has no income and the only income for the family of four including the deceased’s siblings is from a government grant in the amount of R600-00 per month. Despite the Plaintiff’s age and good health she has not been able to find employment since the demise of her son. The Plaintiff closed its case without calling any other witnesses.

[4] The Defendant had no witnesses to testify and closed its case.

The issues in dispute were:

- Whether the deceased had a legal duty to support the Plaintiff
- Whether the Plaintiff was indigent

Submissions

[5] It is the Plaintiff's case that the deceased was the breadwinner at home and supporting the Plaintiff financially. Further

that the deceased saw the need for contribution and volunteered to assist the Plaintiff as she was and still is unemployed.

[6] The Defendant's contention is that the Plaintiff is 43 years old and healthy. Therefore, nothing hinders her from competing in the labour market. It was argued by the Defendant that the deceased only volunteered to assist the Plaintiff and there was no legal obligation on him to support the Plaintiff. A further submission by the Defendant was that the legal duty to maintain the Plaintiff rests on her husband and not the deceased. In that regard the Plaintiff's claim for loss of support should be dismissed with costs.

Law

[7] In relation to the legal duty of children to support their parents the following was stated in the matter of *Oosthuizen v Stanley* 1938 AD 322 at 327-328 that:

"The liability of children to support their parents, if these are indigent (inopes), is beyond question; see Voet 25.3.8; van Leeuwen

Cens.For.1.10.4. The fact that a child is a minor does not absolve him from his duty, if he is able to provide or contribute to the required support; see *In re Knoop* (10 S.C. 198). Support (alimenta) includes not only food and clothing in accordance with the quality and condition of the persons to be supported, but also lodging and care in sickness; see Voet 25.3.4, van Leeuwen, Cens.For.1.10.5; Brunneman, in *Codicem* 5.25. Whether a parent is in such a state of comparative indigency or destitution that a court of law can compel a child to supplement the parent's income is a question of fact depending on the circumstances of each case.

[8] See also *Jacobs v Road Accident Fund* 2010 (3) SA 263 (SE) where it was held that:

"There is a further consideration. It would in my view be invidious were this court to rule that the deceased had no duty to support his father when he had voluntarily assumed that obligation. In my view this undertaking gave the plaintiff a reasonable expectation that his maintenance contributions would continue. A duty of support between family members is one of those areas in which the law gives expression to the moral views of society. In the present case the plaintiff did not have to enforce his right to maintenance from the deceased. The deceased voluntarily assumed that obligation. In my view this is sufficient in itself to warrant a finding that the plaintiff has acquired a right to maintenance from his son, which was enforceable against the insured and, by law, against the defendant."

[9] Grogan AJ held further in the *Jacobs v Road Accident Fund* case supra at par [20] that:

"While it is true that several claims by parents that their children were under a legal duty to maintain them have failed because the parents failed to prove that they were indigent (see, for example, apart from Smith and Wigham, supra, Petersen v South British Insurance Co Ltd 1967 (2) SA 235 (C) and Anthony and Another v Cape Town City Council 1967 (4) SA 445 (A)), these judgments do not

establish an absolute line between indigence and ‘mere’ poverty when it comes to determining the duty of children to support a parent. They must all be read in the light of their own facts. The deciding principle, it seems to me, is whether the parent can prove that he or

she was dependant on the child’s contribution for the necessities of life. What constitutes necessities will in turn depend

on the parent’s station.”

[10] In *Fosi v Road Accident Fund and Another* [2007] ZAWCHC 8; 2008 (3) SA 560 (C) Dlodlo J upheld a claim for compensation for the loss by a child to a parent. It was held that the origin of the obligation resided in customary law and more especially in the idea that were a child not to support a needy parent the child would not be possessed of Ubuntu.

[11] In *Smith v Mutual & Federal Insurance Co Ltd* 1998 (4) SA 626 (C) Gihwala AJ observed at 632D-E that:

“To be indigent means to be in extreme need or want whereas to be poor means having few show that the plaintiff lives on very little or nothing (vide World Book Dictionary). The plaintiff must prove something more. The plaintiff must prove that there is an extreme

need or want for the basic necessities of life”

[12] Sutherland J expounded further on the issue of duty of support in *JT v Road Accident Fund* 2015 (1) SA 609 (GJ) at par 26 as follows:

“It seems to me that these cases demonstrate that the common law has been developed to recognise that a duty of support can arise, in a given case, from the fact-specific circumstances of a proven relationship from which it is shown that a binding duty of support was assumed by one person in favour of another. Moreover, a culturally imbedded notion of ‘family’, constituted as being a network of relationships or reciprocal nurture and support, informs the common law’s appetite to embrace, as worthy of protection, the assumption of duties of support and the reciprocal right to claim support, by persons who are in relationships akin to that of a family.”

[13] This court has a discretion in deciding what necessities the Plaintiff can claim. The object of the RAF is to give prejudiced plaintiffs the fullest possible compensation by placing them, insofar as possible, in the same position in which they were before the damage-causing event. See *Pretorius v Road Accident Fund* 2013 JDR 1096 (GNP).

Analysis

[14] The only evidence in this matter is that of the Plaintiff that her son the deceased owed her a duty of support at the time of his death. The Defendant has not led any evidence to rebut the evidence of the Plaintiff except to argue that she is not indigent without any supporting evidence. It is clear from the Plaintiff’s evidence that although she is married and 42 years at the time of death the deceased’s contributions were clearly required and were in fact used by the Plaintiff to acquire the basic necessities of life like groceries on a monthly basis. The

Defendant in contending the Plaintiff's case was not able to show that the deceased's contribution to his family was mere gratuity to indulge in luxuries of life. Even though the Plaintiff was married at the time of the deceased's death, the undisputed evidence tendered by her was that the husband was only earning R2000-00 in some months when he had work and some months there was no income. That income of the husband when available was insufficient to provide the necessities of life for the Plaintiff and her family. The Plaintiff has two other children who are still minors and receiving a social grant of R600-00 for both of them. There is no evidence before me that there are any sources of income to replace the contribution of which the Plaintiff has been deprived by the untimely death of the deceased. In my view, the Plaintiff was dependant on the deceased for the necessities of life and is now unable to enjoy those necessities due to the untimely death of the deceased. I am satisfied that the Plaintiff is indigent and entitled to a claim for loss of support.

- [15] The voluntary undertaking by the deceased to support the Plaintiff created an expectation that such support would continue. In considering the said voluntary undertaking I am unable to make a finding that the deceased had no legal duty to support the Plaintiff.

Quantum

- [16] The Plaintiff submitted an actuarial report where the amount of R810 800-00 is given as the capital value of loss of support. Contingencies have not been applied and left for the court to determine. There is no actuarial report by the Defendant. The submission by the Plaintiff's counsel was that the determination of contingencies is left with the discretion of the court. It is trite that contingency deductions are within the discretion of the court and depends upon the judge's impression of the case.

See: Southern Insurance Association v Bailey No 1984

- (1) SA 98 (A) at 113 (G) and Robert Kock: IHE Quantum Yearbook 2011 at p104.

- [17] The evidence in this case supports the grant of a pre-morbid contingency of 10% and a post-morbid contingency of 20%. This is based on the circumstances of the Plaintiff before the death of the deceased and the current unfortunate circumstances she finds herself in, post the death of the deceased.

Order

Consequently, I make the following order:

The Defendant is ordered to pay:

1. The Plaintiff's past and future loss of support as set out in the Plaintiff's actuarial report in amount of R810 800-00,

after adjustments for 10% pre-morbid contingencies and 20% post-morbid contingencies have been made;

2. An amount of R17 510-00 for funeral expenses;
3. Interest on the amount referred to in 1 above at a rate of 9% per annum calculated fourteen days from the date of judgment to date of payment;
4. The costs of the action.

ACTING JUDGE OF THE HIGH COURT

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Prepared on 12 October 2026 · Esheria