

SOUTH AFRICA / JUDGMENT

L v Road Accident Fund (69050/2013) [2017] ZAGPPHC 690 (27 October 2017) [2017] ZAGPPHC 690

COURT

North Gauteng High Court, Pretoria

BEFORE

Janse Van Nieuwenhuizen

CASE / FILE NUMBER

69050/2013

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

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

REPUBLIC

OF SOUTH AFRICA

Case

Number: 69050/2013

27/10/17

Not

reportable

Not

of interest to other judges

Revised.

27/10/2017

In

the matter between: P
L Plaintiff
And
ROAD
ACCIDENT
FUND Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] On 25 June 2013, the plaintiffs husband, A M, died as a result of injuries he sustained in a motor vehicle collision.
- [2] The plaintiff has instituted action against the defendant in her own capacity and in her capacity as the natural guardian of the deceased's son, K. for loss of support.
- [3] At the inception of the trial, I was informed by Mr Makuya, counsel for the plaintiff, that the merits of the claim had been settled on the basis that the plaintiff is entitled to 80% of her agreed or proven damages.

Issue in dispute

- [4] The only issue in dispute between the parties is the percentage of the contingency deduction in respect of the plaintiffs claim for future loss of support. The parties are ad idem that a 5% contingency deduction should apply to the past loss of support.

Facts

- [5] The parties agreed that a calculation by JJ Sauer, an actuary, should be utilised in determining the plaintiffs loss of support.
- [6] The deceased was a traditional healer. He received cash for his services and consequently no bank records or any other form of documentary proof of income is available.
- [7] In the result, JJ Sauer based his calculations on the report of an industrial psychologist, Moipone Kheswa. Moipone Kheswa indicated

that the information contained in the report is based on an interview with the plaintiff and collateral information. The collateral

information consists of an affidavit by a former patient of the deceased and affidavits by his peers.

- [8] The deceased's employment history is summarised as follows in the report:

"

- Mr M was self-employed working as a Traditional Healer.
- He used to be a traditional healer treating all kinds of sicknesses.
- He had been self-employed since his primary school level to date of the accident.
- He used to have many clients, and used to work alone.
- He used to make R15000.00 - R18 000.00 per month, and used to buy traditional medicine for R7 000.00 – R18 000.00 per month and some medicine he would go to the bush or mountain to search for them.
- His income would then have been between R8 000.00 - R10 000 per month. "

Legal principles

- [9] Mr Makuya referred to various judgments in respect of the general approach to the determination of a just reward in instances

such as the present. I do not propose to deal with the general principles herein.

- [10] The real issue pertains to the absence of documentary proof in respect of the deceased's income.

- [11] In the event that a mathematical calculation of the income of a party cannot be made, a court evaluates the available evidence in order to arrive at a fair and just amount of compensation. [See: Bridgeman NO v Road Accident Fund QOD 5 84-23]

- [12] Ms Matlhabegoane, counsel for the defendant, referred to the matter of Ndaba v Road Accident Fund (EL 321/08)

- [2011] ZAECELL 6 (30 June 2011) in which a 50% contingency deduction was applied in respect of a hawker who could not provide documentary proof of income.

- [13] The facts in the Ndaba matter differ somewhat from the facts in casu. It was clear from the evidence of the plaintiff in the Ndaba matter that she exaggerated her income. The plaintiff mainly sold vetkoek at a school. In her calculations she did not take school and public holidays into account. Further, the amount of vetkoek sold per day was questionable. In view of the unsatisfactory evidence produced on behalf of the plaintiff, the court resolved to apply a markedly higher contingency deduction.

- [14] In this matter and save for raising a technical point in respect of the commissioning of the affidavits deposed by the deceased's peers, the facts contained in the report of the industrial psychologist were not disputed by the defendant.

- [15] The deceased had a well-established practice as traditional healer and the practice was, according to the information provided by the plaintiff to the industrial psychologist, busy. The affidavits by his peers support the estimated income provided by the plaintiff.

[16] The income of the deceased, however, remains an estimation and to cater for this uncertainty, Mr Makuya, suggested an increased

contingency deduction of 25%. In respect of the plaintiff the contingency deduction should be increased to make provision for re-marriage.

[17] The plaintiff is 45 years of age, unemployed and she has one child, 10 years of age. The plaintiff did not testify and I am consequently not in a position to determine her personal view in respect of remarriage. She could be considered middle-aged, which to my mind, diminishes her chances of remarriage. In view of her age, her prospect of bearing children has decreased, which is a further factor that negates against a future marriage.

[18] Having regard to the recent judgment in *Esterhuizen and others v Road Accident Fund* 2017 (4) SA 461 GP, I am of the view that a 30% deduction would be fair and reasonable in the circumstances.

[19] The total past loss calculated by JJC Sauer amounts to R 420 687. Applying the contingency deductions referred to supra to the future loss of earnings, the amount in respect of Kagiso is R 160 136 and in respect of the plaintiff R 690 041. The total amount for loss of support is therefore 80% of R 1270 864, 00.

[20] Accordingly I make an order in terms of the draft order marked "X".

The defendant shall pay the plaintiff the sum of R1 016 691, 20.

N. JANSE VAN NIEUWENHUIZEN J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

APPEARANCES

Counsel for the Plaintiff: Advocate U.B. Makuya

(079 547 0419)

Instructed by: Masipa Attorneys (Ref: NEM/RAF/08/16)

(012 755 01000)

Counsel for the Defendant: Advocate Ms D.M. Matlhabegoane

(082 676 3691)

Instructed by: Borman Duma Zitha Attorneys

(Ref: RD0397/AV DUMA/HLENGI)

012 886 4628

"IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

BEFORE THE HONOURABLE MADAM JUSTICE JANSE VAN NIEWENHUIZEN

ON THE 27TH DAY OF OCTOBER 2017

NUMBER: 69050/2013

PHELADIMAGGIE LEDWABA PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

After having heard counsel for both parties, the following is mad of Court:

1. That the Defendant is to pay Plaintiff an amount of R1 016 691, 20 in full and final settlement of the Plaintiffs claim against the Defendant.
2. Defendant will be liable for interest on the capital amount due to the Plaintiff at the rate of 10.5% as from the date of this order to date of payment should Defendant fail to make aforesaid payment timeously as per paragraph 1above;
3. The Defendant is ordered to pay Plaintiff's taxed or agreed costs on the High Court scale as between party and party, which costs shall include but not be limited to:

3.1 Costs of obtaining industrial report

3.2 Costs of obtaining Actuarial Report.

3.3 The costs of making bundles for trial, including preparation, drafting and copying of all the bundles of documents, pleadings and notices and all indexes thereto;

3.4 The costs of counsel which shall include reasonable hours for preparation, consultations, drafting of heads of argument and appearances.

4. There is a valid contingency fee agreement.

BY THE COURT

REGISTRAR

Counsel for the Plaintiff: adv U.B Makuya 079 5470 419

Counsel for the Defendant: adv O.M MATLHABEGOANE

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/2017/690.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/l-v-road-unknown-topic-agpphc-2017>

Prepared on 24 October 2026 · Esheria