

SOUTH AFRICA / JUDGMENT

Lourens v Road Accident Fund (30468/2006) [2009] ZAGPPHC 179 (23 March 2009) [2009] ZAGPPHC 179

COURT

North Gauteng High Court, Pretoria

BEFORE

Sapire AJ

CASE / FILE NUMBER

30468/2006

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NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

NORTH AND SOUTH GAUTENG

CASE NO.: 30468/2006

DATE:26/03/2009

C E LOURENS.....Plaintiff

v

ROAD ACCIDENT FUND.....Defendant

JUDGMENT

Sapire AJ

The plaintiff has made claims on the Road Accident Fund for compensation for damages sustained by her minor children, Johannes(20)

Magdalena(18) and Stephanus (17) The claims arise out of an incident on 12 April 2001 which took place at Botha Avenue Centurion

The Plaintiff and her husband were there performing the duties of pointsmen in collaboration with each other to control and co ordinate

the heavy flows of traffic, indifferent directions.

Msiza, the driver, of the insured vehicle, a Toyota minibus, HJC515GP was conspicuously negligent, clearly did not control it as he should have, and collided with the deceased dragging him for some distance on the tarmac before coming to a halt. This took place directly in the Plaintiffs line of vision as she had to continually observe the deceased's signals to respond with directions for the stream of traffic responding to her signals.

It takes little imagination to appreciate the horror, to which the plaintiff was subjected, seeing her husband cruelly injured in this way before her very eyes. This might be a classic case giving rise to a claim by her for damages for emotional shock

The deceased was severely injured but survived his ordeal for some months. During this period he was at times at home but had to go to hospital to undergo a number of operations. His condition however deteriorated until he succumbed to encephalitis and died on 1st December 2002. His death was according to the evidence in all probability linked causally to the initial injury. Although this conclusion that the deceased died of the injuries sustained in the accident was originally in issue, there was no evidence to contradict the testimony of the plaintiffs expert witness. The Defendant eventually conceded that the deceased died as a result of injuries inflicted on him by the negligent driving of the person in control of the insured vehicle.

The amounts of the loss of support caused by the incapacitation and subsequent death of their father, have been calculated by an actuary and now accepted by the Defendant. This element of the plaintiffs claims is now agreed and judgment for the plaintiff will be accordingly given in accordance therewith.

What remains for decision are the claims for damages allegedly suffered by the children caused, (quoting from the particulars of claim) "by the collision, the injuries sustained by the deceased therein as well as the consequent death of the deceased which caused the children to suffer trauma and serious emotional shock." The amount claimed for the children under this head is R60 000 each.

The claims so formulated give an impression of imprecision and vagueness. It seems, bearing in mind that the deceased died some eighteen months after being injured, strange that all three children alike should, each of them, be similarly affected by his being injured and the deceased's consequent death. There is no evidence of, if and when the children or any of them first saw the deceased after he had been injured, and how the sight or report of their badly injured father was so traumatic as to have the result for which the plaintiff contends. Grief and depression which is commonly to be experienced by many as the result of a loved one, does not necessarily give rise to a claim for damages. The plaintiff alleges in the summons, paragraphs 10 11 and 12 that the claim for each of the children is for general damages for emotional shock and trauma suffered on account of the death of the deceased. From this one may gather that they were not traumatised until their father's death on 1st December 2002, twenty month after the accident.

The fact that none of the children came to testify operates adversely to the plaintiffs case. There is no evidence of any professional help having been sought during the years succeeding their father's death to diagnose and treat the respective conditions of each. This means that there is no expert evidence based on observation close to the time of the death..

The Plaintiff relied to a large extent on the expert testimony of Dr I E Walters to establish claims for damages. Her reports were accepted unchallenged as evidence. It is clear that the expert made extensive enquiries and did deep research to arrive at her conclusions based on her knowledge and experience in her discipline. The factual bases of her conclusions have not been proved. The reports fall short of establishing psychological trauma in each or any of the children caused by and attributable to the negligence of the driver of the insured vehicle. She did not see the children until years after the deceased had succumbed to his injuries two years after the accident, and her reports were made for the purposes of this action only relatively shortly before trial.

I have observed that the children were not called to describe the effect of the tragedy on them. They are none of them infants and the eldest will soon attain his majority. Their evidence may have gone some way to have established the necessary link with Dr Walters' report, and the psychological trauma which is said to give rise to the claims under this head. The plaintiff did not call them as witnesses and did not explain this decision.

Not every loss of or injury to a parent causing distress to a child of that parent, gives rise to a claim for damages. It is difficult to accept that all three children remain similarly in a continuous and continuing state of depression because of a psychological trauma. It is too facile and simplistic to attribute the condition in each child found and described by Dr Walters to trauma. What caused the trauma? Was it having to live with their father after the accident, or was it his death?

In Road Accident Fund V Sauls 2002 (2) SA 55 (SCA) it was observed

A further existing limitation is, of course, proof of the actual harm suffered and its sequelae, the burden of which rests on the claimant. It is in this frequently neglected field that extravagant claims will be exposed.

The limitation referred to is of course to claims arising from psychological trauma.

In the present case the lack of evidence from the individuals who are alleged to have suffered the damage, precludes the granting of relief under this head.

There will therefor be judgment in favour of the plaintiff in her representative capacity, against the Defendant for payment of the several sums

In respect of Johannes R152 083-61

Magdalena R179 916-58

Stephanus R216 284-81

to be retained and administered by the plaintiff on behalf of her respective minor children until each attains majority. During the minority of each child the plaintiff shall be entitled to invest such portions as she may see fit and to utilise and apply so much thereof as may be required for their education support and reasonable pleasures. On the attainment of each of the children of their respective majorities she shall pay over any amounts remaining to the child who is the beneficiary of this judgment

Interest at 15.5% per annum shall be paid on the above amounts in so far as payment shall not have been made twenty one days after the date hereof.

The Defendant shall pay the plaintiff's party and party costs of the action including the qualifying and attendance fees travelling

expenses and where applicable the cost of medico legal reports of

Dr G du Plessis

Jacobus Farmer

Dr C dos Santos

And the actuary Gerard Jacobson

Sapire, AJ

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