

SOUTH AFRICA / JUDGMENT

Madzivhanana v Road Accident Fund (22319/2021) [2023] ZAGPJHC 321 (11 April 2023) [2023] ZAGPJHC 321

COURT

South Gauteng High Court, Johannesburg

BEFORE

Mkhabela

CASE / FILE NUMBER

22319/2021

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IN

THE HIGH COURT OF SOUTH AFRICA,
GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 22319/2021

NOT

REPORTABLE

NOT

OF INTEREST TO JUDGES

REVISED

In

the matter between:

DORCAS MADZIVHANANA
& MINORS
Plaintiff
and
ROAD ACCIDENT FUND
Defendant

JUDGMENT

MKHABELA AJ:

[1] On or about 4 May 2021 the plaintiff issued summons out of the division of this Court in her personal and representative capacity against the defendant for loss of support arising from the death of her husband and father of her three minor children.

[2] The damages that the plaintiff seeks in her personal capacity for loss of support are as follows:

2.1 R400 000.00 for past loss of support;

2.2 R2 000 000.00 for future loss of support;

2.3 Total: R2 400 000.00.

[3] The damages in her representative capacity are as follows:

3.1 For the first minor child:

3.1.1 R84 089.00 for past loss of support;

3.1.2 R250 000.00 for future loss of support;

3.1.3 Total: R334 089.00.

3.2 For the second minor child:

3.2.1 R84 089.00 for past loss of support;

3.2.2 R400 000.00 for future loss of support;

3.2.3 Total: R484 089.00.

3.3 For the third minor child:

3.3.1 R84 089.00 for past loss of support;

3.3.2 R1 000 000.00 for future loss of support;

3.3.3 Total: R1 084 089.00.

[4] The summons were served on the defendant on 18 May 2021 at 14h53, if one has regard to the Sheriff's return of service.

[5] On or about 29 March 2021 and as a result of the defendant's failure to file its notice of intention to defend the action, the plaintiff made an application to the Interlocutory Court to obtain authorisation to proceed to trial by default.

- [6] On 10 March 2022, the plaintiff's attorney served the notice of set down of the above application on the defendant's principal place of business.
- [7] On 29 March 2022 this Court per Crutchfield J granted an order in the following terms:
- 7.1 The matter is referred to the Registrar to obtain a date for default judgment;
- 7.2 The Registrar to allocate a date for default judgment;
- 7.3 The respondent to pay the costs of this application.
- [8] Subsequent to the order granted by Crutchfield J, the plaintiff applied for a trial date and the matter came before me on 25 January 2023.
- [9] After the matter was called, the defendant's representatives from the State Attorney in Johannesburg informed the Court that the defendant was requesting a postponement in order to conduct further investigations on the plaintiff's claim.
- [10] Since the application for postponement was moved from the bar, I directed that a written application should be filed and that the plaintiff be afforded an opportunity to file her answering affidavit. I then stood the matter down for the following day.
- [11] On 26 January 2023, I dismissed the application for postponement given the fact that it had no merits at all – and was tantamount to an abuse of court process this was after having regard to the founding and answering affidavits as well as hearing oral submissions from both sides. My other reasons for dismissing the application are stipulated hereinunder:
- 11.1 The defendant's application for postponement had no merits since the defendant wanted more time to investigate an issue that by its own admission was known to it as far back as 2019.
- 11.2 Moreover, our case law is replete with authorities that a party who applies for postponement applies for an indulgence and must therefore show good cause for the interference with the other party's procedural rights to proceed and the general interests of justice in having the matter finalised[1].
- 11.3 Granting the requested postponement was not going to be in the interest of justice and I was also of the view that the defendant who was the applicant was not bona fide in making the application[2]. Furthermore, the prejudice to the plaintiff would have been catastrophic given the plight of the minor children and such prejudice could not have been addressed or cushioned by an appropriate order to costs. It is for that reason that I exercise my discretion to refuse the postponement.
- [12] I then direct that the trial by default should go ahead as per the order granted by Crutchfield J on 29 March 2022.

Plaintiff's evidence

[13] The plaintiff led evidence on both the merits and quantum since there was no separation of issues as contemplated by Rule 33 of the Uniform Rules of Court.

[14] The first witness that testified on behalf of the plaintiff was Ms M. Mekhoe and the gist of her evidence could be summarised as follows:

14.1 The deceased, the late John Madzivhana (“the deceased”) was married to two wives and that she had actual knowledge of these facts since she is the attorney of record for the current plaintiff.

14.2 The defendant has already dealt with the claim in respect of the other wife and an offer of settlement had been accepted by the other wife.

14.3 That she also acted for the other wife and the defendant had already made payment pursuant to the acceptance of the offer that the defendant extended to the other wife.

14.4 The deceased’s other wife is Tsepiso Anna Selepe (“Selepe”) and the defendant agreed to settle her claim in the amount of R1 321 713.00 (one million three hundred and twenty one thousand seven hundred and thirteen rand).[3]

14.5 The terms of the defendant’s offer to settle Selepe’s claim are as follows:

“The Road Accident Fund (RAF) has considered the available evidence relating to the manner in which the motor vehicle accident giving rise to this claim occurred. The RAF has concluded that the collision resulted from the sole negligence of the RAF’s insured driver.

Consequently, without prejudice, the RAF offers to settle the issue of negligence vis-à-vis the occurrence of the motor vehicle collision on the basis that the insured driver was solely negligent in causing the motor vehicle collision.”

14.6 Selepe had two minor children with the deceased.

14.7 The reason why the current case had not been settled is because the previous claims handler by the name of Ms Malaga was removed from the matter and a new claims handler who is Ms Theresa was in charge of the matter all along and had been in communication with her regarding the plaintiff’s claim.

14.8 That Ms Theresa requested certain documents from her and never indicated that the RAF was disputing or defending the plaintiff’s claim.

[15] The second witness that testified on behalf of the plaintiff was the plaintiff herself and her evidence could be summarised as follows:

15.1 That she was the second wife of the deceased and referred to a marriage certificate uploaded on Case Lines.

15.2 That she has three children with the deceased and referred to the birth certificates of her children.

15.3 That the deceased was employed as a Metro Police Officer at the time of his death.

15.4 That she was and still is a housewife since her marriage to the deceased.

[16] The next witness that testified in support of the plaintiff's claim was the plaintiff's Actuary, Mr I Minaar, and his evidence could be summarised as follows:

16.1 That the deceased's total income has to be apportioned to all his dependents in order to avoid over-compensation.

16.2 That the children's support from the deceased is equal to the balance of the deceased's income after deducting his own

support and the support to his spouses. The balance is then apportioned equally to the children.

16.3 That the total claim to the plaintiff and her three minor children is R2 357 ,712.00 (two million three hundred and fifty-seven

thousand seven hundred and twelve rand).

Evaluation

[17] It is not disputed that on or about 2 June 2018 at the N1 Main Road, between Globla and Sekonye cross, Botlokwe in Polokwane, the deceased was a driver of a motor vehicle bearing registration number VHD713GP and the following incident took place:

17.1 The deceased's motor vehicle collided with another motor vehicle with registration number DWP907GP which was driven by the insured negligent driver.

[18] It is also not in dispute that the collision was solely caused by the negligence of the insured driver as evidenced by the defendant's offer of settlement to Ms Selepe, the other wife whose claim the defendant had already settled and made payment thereof. The legal significance of the settlement by the defendant of Ms Selepe's claim is that the defendant has conceded the merits unconditionally.

[19] *Santum Bpk v Henry*[4] illustrates the proper approach to be adopted in assessing the validity of a dependant's claim for loss of support. The judgment manifests a number of requirements[5] and I am of the view that all those requirements are satisfied from the evidence given by the plaintiff and the documentary evidence in the form of the plaintiff's marriage certificate and the birth certificates of her three minor children.

[20] In the circumstances the only question that falls crisply for determination is the amount of damages that the Court should award. In this regard the Actuary's report and the evidence of Mr I J Minaar is instructive.

[21] Mr Minaar's expert report illustrates clearly how the deceased's total income should be apportioned to all the minor children.

[22] The plaintiff's total claim for damages as pleaded in her particulars of claim, both in her personal and representative capacity, amounts to R4 302 267.00 (four million three hundred and two thousand two hundred and sixty seven rand). It would appear that this claimed amount fails to take into account that the deceased had to support all his dependents from one source of income.

[23] I am therefore persuaded that the amount mentioned by Mr Minaar is reasonable and appropriately calculated – and that the amount constitutes the plaintiff's total proven damages.

[24] In the result, I make the following order:

1. The defendant is ordered to pay the plaintiff an amount of R2 357, 712.00 (two million three hundred and fifty seven thousand seven hundred and twelve rand).
2. The defendant is ordered to pay the costs of the whole trial including the costs incurred to approach the Interlocutory Court and the costs incurred upon the dismissed application for postponement.

R B MKHABELA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 11 APRIL 2023.

COUNSEL FOR THE PLAINTIFF: MR RAMUKHESA INSTRUCTED BY: MEKHOE ATTORNEYS

ATTORNEY FOR DEFENDANT: MR NGOMANE INSTRUCTED BY: FROM STATE ATTORNEY JHB

DATE OF THE HEARING: 25-26 March 2023

DATE OF JUDGMENT: 11 April 2023

[1] *Bovungana v Road Accident Fund* 2009 (4) SA 123 (E), par 13.

[2] *Hall v Multilateral Vehicle Accidents Fund* 1998 (4) SA 195 at 200.

[3] The defendant admitted negligence in its offer to settle Ms Selepe's claim, who was the other wife of the defendant- which is uploaded on case.

[4]

[1999] ZASCA 5; 1999

- (3) SA 421 (SCA) at 430.
- [5] The claimant for loss of support resulting from the unlawful killing of the deceased must establish that the deceased had a duty to support the dependant , It had to be a legally enforceable duty, the right of the dependant to such support had to be worthy of protection by the law.
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