

SOUTH AFRICA / JUDGMENT

Mokhati v Road Accident Fund (13608/2015) [2016] ZAGPPHC 1041 (20 December 2016)

[2016] ZAGPPHC 1041

COURT

North Gauteng High Court, Pretoria

BEFORE

Ranchod

CASE / FILE NUMBER

13608/2015

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA
CASE NO:13608/2015
20/12/2016

Reportable:	No
	Of
	interest to other judges: No
	Revised.
	In
the matter between:	MOKHATI NTEMEKOANE
	JACOB PLAINTIFF
	and
	THE
	ROAD ACCIDENT
	FUND DEFENDANT

JUDGMENT

RANCHOD J:

- [1] The plaintiff in this matter claims damages against the defendant in terms of the provisions of the Road Accident Fund Act 56 of 1996 (as amended) for loss of support as the result of the death of his son in a motor vehicle collision on 10 November 2012. The plaintiff's son (the deceased) Mr Sampie Isaac Mokhati was a passenger in the insured motor vehicle.
- [2] The negligence of the insured driver was previously conceded in favour of the plaintiff by the defendant and it was made an order of Court on 3 June 2016.
- [3] The crisp issue for determination is whether the plaintiff has a right to claim for loss of support as a result of the death of the deceased - and if so, the quantum thereof.
- [4] As far as quantum is concerned, the defendant admitted the plaintiff's two expert reports, namely, a medico-legal report by an Industrial Psychologist, Mr W. Wessels and an amended actuarial report by Mr G.A Whittaker of Algorithm Consultants and Actuaries

which was handed up during the trial.

- [5] The defendant had raised what I would call a rather bizarre special plea to the effect that the plaintiff was not entitled to general damages when it was patently clear that plaintiff's claim was for special damages i.e., loss of support. The plaintiff sought an order dismissing the special plea with costs. granted the order and the matter then proceeded on the issue in dispute.
- [6] The plaintiff testified about South-Sotho customs in terms of which, he said, the deceased had a duty to support him for household

necessities. I do not seem it necessary to delve further into traditional customs as there are a number of decided cases in which

it has been held that such customs and should be taken into account with regard to the duty of a child to support his or her indigent

parents. (See *Jacobs v Road Accident Fund* 2010(3) SA 263 (SE); *Fosi v Road Accident Fund and Another* 2008(3) SA 560(E) and *Seleka v Road Accident Fund* unreported case no 12555115 Gauteng Division Pretoria).

- [7] Indeed, defendant's counsel submitted during arguments that the defendant does not dispute the principle regarding the duty of a child to support a parent or parents. The issue, said counsel, was whether the deceased in fact supported the plaintiff during the former's lifetime.

- [8] The plaintiff testified that the deceased was about 33 years old when he died in the motor vehicle accident. During his lifetime the deceased who was unmarried, lived with the plaintiff. The plaintiff was 60 years old at the time of the trial. His highest level of education is a standard 3 (grade 5). At the time of the deceased's death the plaintiff was a pensioner having been on a disability grant (for blindness and tuberculosis).
- [9] Plaintiff testified that the deceased had supported him in amounts of between R400 and R500 per month. However, at times he did not support him at all if he had, as plaintiff put it, other financial commitments. The deceased supported him for between 6 and 8 months in a year he said.
- [10] In examination-in-chief the plaintiff testified that he was aware that the deceased had a child as the deceased had told him about it. However, he saw the child for the first time only after the deceased died while he was preparing for the deceased's funeral. He said he had informed the child's mother and her parents of the deceased's death. He said he knew them only by sight. He also said he did not know whether the deceased had supported the child. The deceased would tell him when he was going to visit the child.
- [11] The plaintiff received a monthly pension of between R1300.00 and R1400.00 per month at the time of the deceased's death. He receives a child grant for one of his three children while his wife receives grants for their other two children at R400 per month per child. Why this was split was not explained.
- [12] The plaintiff said his monthly expenses were R100 for rental, between R20 and R50 for electricity, R340 to R350 for groceries and R20 per day for meat but, he said, this was not a daily expense. He did not clarify it further. He said he also paid R500 per month for a fridge (which should come to an end once its paid off). In this regard it is noteworthy that in the quantum bundle an expense item was R879 for Bosveld Wholesalers. He said he did not buy anything for R879 and did not know how the receipt came to be included in the bundle. He paid R150 per month for his youngest child's nursery school fees. The two older children were in a public school for whom no fees were payable. There were also certain annual expenses for shoes for the children at R150 per child. He also paid for two funeral policies at R118 and R130 per month and a third policy the premium for which was deducted from his monthly grant.
- [13] The plaintiff's monthly expenses appear to be in the order of about R1 758 per month which is calculated as follows:

Rental

R100

Electricity (average)

R35

Groceries (average)

R345

Meat (3x per week)

R200

Fridge instalment

R500

Nursery school

R150

Funeral policy

R118

Funeral policy

R130

Funeral policy (assumed)

R130

Shoes (average)

R50

R1758

(I have assumed a monthly premium of R130 for the third funeral policy which is deducted from his pension) whereas his monthly income

including the child grants his wife gets is R2 550 (excluding any contribution by the deceased when he was alive - if he in fact

supported the plaintiff as alleged by him).

[14] If, as alleged by the plaintiff, the deceased contributed monthly - when he was able to - an average of R450 then the plaintiff's income was about R3 000 per month.

[15] There is the additional difficulty of establishing the deceased's monthly income and whether it was stable and regular. The plaintiff testified that the deceased supported him on average 6 to 8 months per year. He said that immediately prior to his death the deceased had worked for Starlight but he could not remember for how long. He was referred in cross-examination to his affidavit in support of his claim which had been discovered by plaintiff's attorney in which at paragraph 2 he had said that the deceased had worked for Starlight for only five months. He responded that he believed so but he was not certain. In contrast, a Ms Brits of Starlight provided an affidavit in which she said the deceased was employed there for about

one and a half year. Ms Brits was not called to testify. The onus is on the plaintiff to prove his case. Here he has provided two contradictory affidavits - one by himself and another ostensibly by the erstwhile employer of the deceased. They are mutually destructive versions.

[16] The plaintiff also testified that prior to working for Starlight the deceased had been doing so-called 'piece-jobs' in Swartruggens.

Plaintiff said he did not know what the piece-jobs entailed nor what the deceased earned.

[17] Under cross-examination the plaintiff further testified that prior to the deceased having worked for Starlight he (plaintiff) lived on the income from his disability and child grants. Importantly he said he even supported the deceased even though the latter did piece jobs, as he, plaintiff, was the breadwinner. He went on to say that the deceased would only support him when he (the deceased) was not financially committed elsewhere. It seems at most the deceased may have made ad hoc contributions to the plaintiff.

[18] As I said the onus is on the plaintiff to prove his case, i.e. the quantum. He failed to do so on a balance of probabilities. He has not proved that he is indigent.

[19] The plaintiff's claim is dismissed with costs.

RANCHOD J

Appearances:

Counsel on behalf of Plaintiff

: Adv P Nel

Instructed by

: Adams & Adams

Counsel on behalf of Defendant

: Adv Phahlamohlaka

Instructed by

: Mathipane Tsebane Att.

Date heard

: 10 August 2016

Date delivered

: 20 December 2016

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