

SOUTH AFRICA / JUDGMENT

N on behalf of HMN and Another v Road Accident Fund (05717/19) [2021] ZAGPJHC 754 (30 November 2021)

[2021] ZAGPJHC 754

COURT

South Gauteng High Court, Johannesburg

BEFORE

F Karachi

CASE / FILE NUMBER

05717/19

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

CASE

NUMBER: 05717/19

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED

30

November 2021

In

the matter between: N[....],
K[....] M[....]3
obo
Plaintiff
N[....],
M[....] H[....] and
K[....]2,
M[....]2
and
ROAD
ACCIDENT
FUND
Defendant

Delivered: 30 November 2021 - This judgment was handed down electronically.

JUDGMENT

Karachi AJ:

Introduction

1. The plaintiff is K[....] M[....]3 N[....] an adult female born on the 30th of July 1983. The plaintiff acts in her personal capacity as well as in a representative capacity as the biological mother and guardian of M[....] H[....] N[....] a minor born on the 22nd of May 2010 and M[....]2 K[....]2 a minor born on the 11th of December 2004 (“the minor children”).
2. The plaintiff has instituted a claim for damages against the defendant, the Road Accident Fund (“the RAF”). Both merits and quantum remain in dispute.
3. Due to all manner of delays occasioned by the RAF, the RAF’s defence was struck out on 29 April 2021. The matter was enrolled for hearing on the default judgment trial court roll and was allocated to me for hearing on 4 November 2021.

The plaintiff’s evidence

4. On the 8th of July 2015 a motor vehicle collision occurred. At the time of the collision, A[....] K[....]2 (“the deceased”) was a passenger in one of the motor vehicles. The deceased sustained injuries as a result of the collision, was hospitalised and later succumbed to his injuries on 2 August 2015.
5. During the lifetime of the deceased, he owed a duty to maintain the plaintiff and the minor children in the following circumstances:

5.1. The deceased and the plaintiff were customarily married to each other on the 13th of September 2013;

5.2. The two minor children were born from the relationship between the deceased and the plaintiff;

5.3. The plaintiff and minor children were dependant on the deceased for their maintenance and support, which the plaintiff was accustomed to receiving.

6. At the time of the collision the deceased was working as a motor mechanic at Ndaba Gearbox Doctor in Wynberg, earning R1350, 00 per week.

7. The deceased took up a second job as a waiter at Lago Puccini Café and Lounge in Benoni earning R1950, 00 per month and tips of R650, 00 (on average) per shift. The deceased was working both these jobs at the time of the accident.

8. The plaintiff was working as a domestic worker at the time of the collision earning R4000, 00 per month.

9. The plaintiff has not been in any other relationship subsequently and is not interested in such.

10. The plaintiff claims loss of support in her personal and representative capacity for past and future loss of support in the amount of R 2 228 090, 00 and R 30 000, 00 for funeral expenses.

11. The affidavit of the plaintiff's expert, Ms Theron, an industrial psychologist and the plaintiff's actuary Mr Whittaker were accepted as evidence in the trial.

The experts

(i) Ms Theron – Industrial Psychologist

12. At the time of the accident, the deceased was employed in two jobs. He was working three days a week as a motor mechanic and the remainder of the week as a waiter. The manager at the restaurant where the deceased worked as a waiter described the deceased as someone with high work ethic and had potential to become a manager.

13. The deceased seems to have been determined to make something of himself. He broadened his skills and employability options.

14. The deceased's earnings at the time of the accident included R 1 350, 00 per week from the mechanic work and R 1 950, 00 per month from waitering plus tips of between R 500, 00 to R 800, 00 per shift.

15. His minimum annual earnings in 2015 was calculated as R 93 594, 60 commensurate with the mid-point between the median and upper quartile earnings for semi-skilled workers in the non-corporate sector.

16. The deceased was 32 years old at the time of the accident and still had many years of employment ahead of him.

17. Had the accident not occurred, he would have probably remained working in the non-corporate sector of the open labour market. With time and experience he would have been able to progress to upper quartile earnings of the scale of semi-skilled workers by the age of 45 years. This would have represented his career earning ceiling and

he would have been able to maintain this level of earnings, receiving the usual inflationary increases until his retirement (of 65 years).

(ii) Mr Whittaker (Algorithm Consultants & Actuaries) – Actuary

18. The deceased's earnings (excluding tips) of R 93,595 per annum at date of death would have increased uniformly to the upper quartile earnings of the scale for semi-skilled workers, i.e. R 178,000 per annum (July 2019 money terms) at age 45. Thereafter his earnings would have increased in line with inflation only until his retirement at age 65.
19. The deceased's tips at date of death were taken as R 109 200, 00 per annum (i.e. average of R 500 to R 800 per shift x 3 to 4 shifts per week x 48 weeks per annum). His tip earnings would have increased in line with inflation only until his retirement at age 65.
20. At the date of the accident the plaintiff was employed as a domestic worker. She presently earns a basic salary of R 4 000, 00 per month (per Ms Theron's report dated 31 August 2019). Overtime is paid at R 25, 00 per hour. However, no details of overtime worked was provided so overtime was ignored in the calculations.
21. The net income of the deceased and the net income of the plaintiff were combined to form the total net family income available for distribution in the household. The total family income has been apportioned on the basis of 2 shares to the deceased, 2 shares to the plaintiff and 1 share to each child. Each income earner firstly applies their own income to their required level of support.

The balance (if any) is then apportioned among the remaining family members.

22. Having regard to the aforesaid calculation and having applied a 5% contingency in respect of all past losses and a 15% contingency deduction in respect of the plaintiff's loss and 10% and 12.5% respectively in respect of the two minor children's loss until the age of 21 years, the loss of support suffered by them are as follows:

22.1. Plaintiff R1 345 084, 00

22.2. M[....]2 R425 685, 00

22.3. M[....] R681 865, 00

23. In the circumstances the total compensation amounts to R2 452 634, 00

Evaluation

24. In Joubert LAWSA, Vol 7 para 89, the following passage appears: “(T)he portion of the deceased’s income devoted to support of the plaintiff – involves an estimate of how much the deceased would have continued to set aside for the deceased’s own use and for expenses, and how much for his or her dependants. It is always necessary to accommodate special factors – for instance, that one child would require a larger share than his or her siblings, and that as children become independent so the surviving spouse would receive a greater proportion of the income. In the absence of such special factors, the common actuarial approach is to allocate two parts of the deceased’s income to each parent and one part to each child.”
25. In Groenewald v Snyders 1966 (3) SA 237 (A) at 247F-H the court held that “In bread-winner cases it might sometimes be possible to prove the value of the lost support by reference to the cost to the dependant of continuing in the same standard of living. This, however, is impractical, if not impossible, where the deceased and his dependants (each of whom has an individual claim) have been living as a family entity in a joint household. In that event, especially in the average case where the deceased has been spending his available income on the maintenance of himself and his family, a recognised approach is to apportion his nett income among the members of the family on a basis appropriate to the facts.”
26. On the whole I am satisfied that the actuarial computation based on (Basis IB age 21) should apply to the circumstances of this case.
27. I find that the amount of R 2 258 090, 00 is fair and reasonable.
28. I am satisfied that a case has been made out for the relief claimed in respect of loss of support and funeral expenses.

Order

29. In the result, I make the following order:

29.1. The defendant shall pay the sum of R 2 288 090, 00 to the plaintiff’s attorneys, Erasmus de Klerk Inc. which amount shall be payable by direct transfer into their trust account, details of which are as follows:

ERASMUS DE KLERK INC

ABSA Bank

Account number: [...]

Branch number: 632 005

Rosebank

Ref.: J Erasmus/N[...] KM

29.2. The amount referred to above will not bear interest unless the defendant fails to effect payment thereof within 14 (fourteen) calendar days of the date of this order, in which event the capital amount will bear interest at the rate of 7% per annum calculated from and including the 15 (fifteenth) calendar day after the date of this order to and including the date of payment thereof.

29.3. Subject to the discretion of the Taxing Master, the defendant must make payment of the plaintiff's taxed or agreed party and party costs on the High Court scale into the aforementioned trust account, which costs include (but not limited to):

29.3.1. The costs of counsel (which is to include, inter alia, preparation, perusal, and counsel's fees for 4 November 2021);

29.3.2. The costs of Attorney;

29.3.3. All the cost in obtaining all medico legal/expert and actuarial reports, as well as the plaintiff's travelling in attending the plaintiff's experts, of the following experts: Lorette Theron (Industrial Psychologist); Algorithm Consultants & Actuaries.

29.4. The following provisions will apply with regard to the determination of the aforementioned taxed or agreed costs –

29.4.1. The plaintiff shall serve the notice of taxation on the defendant's attorney of record;

29.4.2. The plaintiff shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs from date of settlement or taxation thereof;

29.4.3. Should payment not be affected timeously, the plaintiff will be entitled to recover interest at the rate of 7% on the taxed or agreed costs from date of allocator to date of final payment.

F KARACHI

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: Adv D Combrink

For the Defendant: No appearance

Date of the hearing: 4 November 2021

Date of the judgment: 30 November 2021

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Prepared on 13 October 2026 · Esheria