

SOUTH AFRICA / JUDGMENT

Sandleni and Others v Minister of Police (76353/2015) [2018] ZAGPPHC 840 (13 September 2018) [2018] ZAGPPHC 840

COURT

North Gauteng High Court, Pretoria

BEFORE

D S Fourie

CASE / FILE NUMBER

76353/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO OTHER

JUDGES

(3)

REVISED.

Case No: 76353/2015

13/9/2018

In

the matter between:

DELIWE

SANDLENI &

OTHERS

Plaintiff

and

MINISTER OF

POLICE

Defendant

JUDGMENT

D S FOURIE, J:

- [1] This is a claim for payment of damages suffered by the plaintiff in her personal and representative capacity as mother and natural guardian of four minor children as a result of the death of her husband. According to the pre-trial minute dated 1 August 2018 the defendant conceded 90% of the merits in favour of the plaintiff and agreed to pay the amount of R18 000.00 (R20 000.00 X 90%) in respect of funeral expenses. There is only one issue to be decided and that

relates to the amount of income which the deceased had received prior to his death.

EVIDENCE FOR THE PLAINTIFF:

- [2] Only one witness testified for the plaintiff. He is the owner of a spray- painting shop and was the deceased's employer. The deceased was employed as a manager of this spray-painting business in Nelspruit. The witness testified that he cannot read, but is able to write his name and surname. The deceased started to work for him during 2009 when he earned a salary of R6 500.00 per month. At the time of his death (March 2015) he was earning R8 600.00 per month.
- [3] The deceased also earned an additional income for overtime work. This overtime means starting early in the morning and "maybe up to 8:00 pm". This happened more than once per week. He paid the deceased R420.00 per hour for overtime. When asked what the average overtime per week was, he was unable to answer. He could also not say what the minimum overtime per week was. Only much later he testified that the deceased was paid for two hours overtime twice a week.
- [4] He was then presented with a "certificate of service". He admitted that this document was signed by him. He also conceded that "all the handwriting" on page 1 of this document is that of himself. Shortly thereafter he qualified his evidence by stating that he only completed paragraphs 1 and 2 of this document (his name and surname). All the other paragraphs on page 1 and 2 were completed by a certain lady. Paragraph 6 stipulates that the deceased was a manager, paragraph 8 indicates that the "salary at date of accident " was R6 000.00 and paragraph 8.1 which refers to "overtime (if any)" was left open. According to paragraph 10 the income for "twelve months prior to the accident " was R72 000.00.
- [5] With regard to the salary of R6 000.00 the plaintiff testified that he could not remember where this amount "came from". According to him the person who interviewed him with regard to this document never asked what the deceased was earning at the time of his death and the document was never read back to him.

- [6] In cross-examination he explained that most of the time during the deceased's employment he attended to another business at the taxi rank whilst the deceased was looking after the spray-painting business. He was also cross-examined about the certificate of service. It was put to him that he informed the person who had an interview with him that the deceased was never paid an additional income for working overtime. He denied this allegation.

EVIDENCE FOR THE DEFENDANT:

- [7] Only one witness testified for the defendant. He is an assessor who had an interview with the deceased's employer (the previous witness) in connection with this claim. He was instructed by the State Attorney to investigate the earnings which the deceased had prior to his death.
- [8] He was informed by the previous witness that he was unable to write but later he explained that he was able to write, "but it would take too long". However, according to this witness the certificate of services was completed by the previous witness. He also testified that the previous witness informed him that the deceased's salary was R6 000.00 per month and that he paid him no overtime. In cross-examination this witness also testified that, before the certificate of service was completed, he explained the questions referred to therein to the previous witness.

DISCUSSION:

- [9] When considering the evidence it is clear that there are material

factual disputes between the two witnesses. Nienaber JA indicated that the technique generally employed by Courts in resolving factual disputes may conveniently be summarised as follows:

"(a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the Court's finding on the creditability of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extra-curial statements or actions,

- (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the Court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. ... But when all factors are equipoised probabilities prevail".

- [10] It is therefore not only appropriate but also necessary to say something about the credibility and reliability of the witnesses. An assessment in this regard has to take into account the general context, the witness' memory and the ability to express him- or herself properly. It is a well-known fact that sometimes witnesses do make mistakes and even contradict themselves. One should therefore distinguish between bona fide errors and an intentional untruth. I have had the opportunity to observe the demeanour of both witnesses and to listen carefully to their evidence. I did not get the impression that any of them intentionally tried to mislead the Court or knowingly told an untruth.
- [11] However, the witness for the plaintiff did not impress me. Initially he was unable to give particulars about the deceased's overtime earnings. He said he cannot remember. Later on he all of a sudden was able to give particulars. That created the impression that he was reconstructing events of the past which he could initially not remember. He also contradicted himself with regard to the handwriting on the certificate of service. Initially he admitted that it was all his handwriting, but later on he changed his evidence in this regard. This is not to say that he was dishonest, but it certainly affects the reliability of his evidence. On the other hand, the witness for the defendant created a much better impression and I have no reason to doubt the veracity of his evidence.
- [12] I also have to consider the probabilities. The certificate of service plays an important role in this regard. It was signed by the deceased's employer and it indicates that his salary was R6 000.00 "at date of accident". The employer was unable to say who supplied this information. According to him he was never asked about the deceased's income. It is not in dispute that the purpose of the visit and interview was to investigate the deceased's earnings. It is therefore highly improbable that the witnesses would not have discussed the income or any overtime of the deceased.
- [13] This information could only have been obtained from the plaintiff's witness. It contradicts his evidence that the plaintiff's salary was at that stage RB 600.00 per month. There is also no indication that any additional income was paid for overtime. It therefore appears to me that I should accept that the deceased's income was R6 000.00 per month at the time of his death, with no additional income for overtime. Put differently, in my view the plaintiff was unable to prove a salary of RB 600.00 per month as well as an additional income for overtime.
- [14] On the last day of the hearing I requested the parties to obtain (by agreement) an actuarial calculation based on three different scenarios which were argued before me. In view of my conclusion referred to above the plaintiff is entitled to compensation based on the first scenario, i.e. earnings of only R6 000.00 per month without any overtime. That amounts to R755 889.30 (90% of R839 877) as calculated by the actuary plus funeral expenses of R18000.00. I shall therefore grant an order accordingly.

ORDER: In the result I make the following order:

1. The defendant shall pay the plaintiff the amount of R733 889.30;

2. The defendant shall pay the costs of suit.

DS FOURIE

JUDGE OF THE HIGH COURT

PRETORIA

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Prepared on 11 October 2026 · Esheria