

SOUTH AFRICA / JUDGMENT

Scheepers v Road Accident Fund (68351/2013) [2017] ZAGPPHC 290 (20 June 2017) [2017] ZAGPPHC 290

COURT

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

68351/2013

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OFFICE OF THE CHIEF JUSTICE
GAUTENG DIVISION, PRETORIA

CASE

NO: 68351/2013

Not

reportable

Not of

interest to other judges

Revised.

20 June

2017

In the matter

between:

ROLEEN
SCHEEPERS PLAINTIFF
and
THE ROAD ACCIDENT
FUND DEFENDANT

JUDGMENT

MOSOPA AJ

1. The Plaintiff in this matter was married to Johannes Hermanus Scheepers (hereafter referred to the "deceased") who was fatally injured in a motor vehicle collision which occurred on the 1st of December 2008 between DF Malan Drive and Reigers streets, Mountain View, Pretoria. The Plaintiff being the wife of the deceased sues the Defendant in terms of the Road Accident Fund Act No 56 of 1996 for damages for loss of support sustained by her as a result of the death of the deceased.
2. The matter came before this court with concession of merits by the Defendant in favour of the Plaintiff. The Plaintiff's success to do so would be dependent on whether she is able to demonstrate on a balance of probabilities that she placed sufficient proof of loss of support by way of evidence before the court and that she is indigent and therefore legally entitled to receive damages as a result of the death of her husband from the Defendant.
3. Two witnesses were called to proof the Plaintiff's claim being the Plaintiff herself Mrs Scheepers and Mr Gert Pieter Scheepers being the biological father of the deceased:
 - 3.1 The Plaintiff testified that the deceased was her husband and following the motor vehicle accident her husband was involved in she suffered loss of support. Her husband was involved in a business of electrical and plumbing installation and the business's name was Kwandebele Constructions.
 - 3.2 That she was involved with the deceased for 8 (eight) years prior to the death of the deceased but they were only married for 8 eight months leading to the death of the deceased. There were no children born out of the marriage between the Plaintiff and the deceased and also out of wedlock.
 - 3.3 The deceased was a sole proprietor of his business and he was registered as an electrician with the Electricity Board and his business and was not registered as such. she estimated her deceased's husband earnings to be R50 000 (Fifty Thousand Rands) per month before the deductions.
 - 3.4 She referred to the list of invoices of her husband's business and said that the invoices, were for a period of 4 years and six months before the death of her husband. Reference was also made to bank statements from a period starting from 5th September 2008 -4th December 2008.
 - 3.5 Mr Gert Pieter Scheepers is the father of the deceased and the father - in law of the Plaintiff. He is in the electrical and plumbing business as well. He used to work on certain government projects with the deceased, however the deceased had his own business and he had his own business.

3.6 The deceased was responsible for the maintenance of the Plaintiff. The invoices referred to were in line with the type of work the deceased was doing. He was getting a lot of money and on some occasions he was not paid. He estimated his income to be between R200 000 00 to R300 00 00 per month. The deceased would take R50 000 00 home and he was paid mainly in cash.

4. The Defendant did not call any witnesses and challenged the Plaintiff's claim that there is no quantification of the loss and that the Plaintiff failed to place evidence before court to proof that she is entitled to damages for loss of support.
5. It is trite that married people have a legal duty to maintain each other and the reciprocal duty terminates either at the time of divorce or termination of the marriage or at the time of death of one of the parties under common law, but statutory provision can be made for the court to order on spouses to maintain the other after divorce either in terms of the agreement between the parties or otherwise.
6. Section 17 (1) of the Road Accident Fund Act No 56 of 1996 provides as follows:
 - (1) The Fund or an agent shall-
 - (a) Subject to this Act, in the case for compensation under this section arising from the driving of a motor vehicle where the owner

or the driver thereof has been established;

- (b) "Subject to any regulation made under subsection 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established;

Be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any

bodily injury to himself or herself or the death of or any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle of his or her employee in the performance of the employees ' duties as employee: Provided that the obligation of the fund to compensate a third party for non-pecuniary loss shall be limited to compensation in subsection (IA) and shall be paid by way of a lump sum"

7. From the foregoing it is clear that the Defendant into the shoes of a negligent driver to compensate any person for any loss the third party has suffered as a result of death of any person within the Republic.
8. It is established law that unchallenged evidence is not automatically accepted as the truth and does not discharge a litigants' onus. See Stifmen v Kriel 1909 TS at 538.
9. The Plaintiff avers in the particulars of claim that she is unemployed. However I am

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alive to the fact that the date of the summons is the 301 October 2013, which is approximately 3 (three) years and 4 (four) months before the hearing of the matter.

10. The Plaintiff never put forward any evidence before me which indicates that what is her current occupation. Nothing was placed before me what type of lifestyle did the parties have before the death of the deceased and as to whether there was any deterioration of such a quality for the lifestyle since the deceased's death.
11. I was only informed that the estimated amount the deceased was taking home was R50 000 00, however, there is no document which proves such amount was earned by the deceased looking at the fact that he was self - employed and the evidence by Mr Gert Pieter Scheepers the deceased's father that there were times they were not paid. Looking at that evidence it is not clear what amount was the deceased earning on a monthly basis. A proper look at the bank statements, relating to the business which were part of the bundle also does not indicate that the deceased was earning the amount closer to what was estimated by the Plaintiff.
12. Plaintiff testified that even though the deceased was registered as an Electrician his business was not registered with the Department of Trade and Industry. This find corroboration in the bank statements provided by the Plaintiff relating to the deceased being a personal bank account and not a business account.
13. The Plaintiff presented invoices which she contends were proof of income of the deceased's income. However on the proper look of such invoices, the invoices are vague in that they don't indicate as to what invoice was for and to which company is such invoices directed to.
14. A request was made by the Defendant in terms of Rule 21 (2) of the Uniform Rule being for the request for further particulars for purposes of trial on the 28th April 2017. On the 12th May 2017 the Plaintiff responded by giving the invoices that I have referred to above. To me that did not resolve the problem the Defendant was having.
15. The Plaintiff and the deceased were married out of community of property and she testified that she did not have an insight into the invoices of the deceased's business and further that she did not have an insight to the bank account of the deceased.
16. In argument, Mr Raubenheimer on behalf of the Plaintiff referred me to the case of *Esso Standard SA. (Pty) Ltd v Katz* 1981 (1) SA 964 (A) where the following was said by Diemont JA.

"It has long been accepted that in some types of cases damages are difficult to estimate and the fact that they cannot be assessed with certainty or precision will not relieve the wrongdoer of the necessity of paying damages for his' breach of duty"

17. The above authority cannot support the case of the plaintiff based on the following:

17.1 Even though the Defendant has conceded the merits of the case, the onus is on the Plaintiff to properly and adequately quantify the amount of loss of support;

17.2 What then becomes relevant and important will be the income of the deceased or the breadwinner;

17.3 In casu we were told that the deceased was a self-employed in the Electrical and Plumbing business. Lists of invoices presented to prove the income of the deceased are not of any assistance as they do not indicate as to what type of the work it was for and with which institution.

17.4 The Plaintiff estimated the monthly salary of the deceased to be in the region of R50 000 00 without telling what informs her to come to that amount. More importantly, the Plaintiff's expert Munro Actuaries, in their report indicated that; "further

investigation should be conducted to determine the true earnings of the deceased at the time of the accident" and this was despite the fact that the expert was provided with the list of invoices on which the Plaintiff relies that it was the deceased's income.

18. On the other hand Ms De Meyer referred me to the case of *Smith vs Mutual and Federal Insurance Company Ltd* 1998 (4) SA 626 (C) at 632 (c) where Gihwala AJ said the following: "For the Plaintiff to succeed in this matter, he must prove on a balance of probabilities that he and his wife are indigent and cannot support themselves, in addition that the deceased was able to contribute or provide the required support."

19. The principle adopted in the *Smith's* case supra is relevant to the current case, in that the duty is placed upon the Plaintiff to place before court that the deceased was able to contribute and provide the required support to her and that she is indigent to support herself.

19.1. In casu no sufficient facts were placed before me by means of evidence that the Plaintiff is indigent and not able to support herself;

19.2. That at time of lifetime of the deceased, the deceased was able to contribute or provide the required support to her;

19.3. That as a result of the death of the deceased she was unable to support herself and she is indigent.

20. In *Smith's* case supra, at page 632 (D) it was further stated that, "To be indigent means to be in extreme need or want whereas to be poor means having few things or nothing. Accordingly when the Plaintiff pleads indigence, it is not sufficient to show that the Plaintiff lives on very little or nothing. The Plaintiff must prove something more. The Plaintiff should prove that there is extreme need or want for the basis of necessities of life."

CONCLUSION

21. The onus is on the Plaintiff to proof on a balance of probabilities that the deceased was contributing and provided the required support to her. Further that as a result of the death of the deceased she cannot support herself thus rendering her indigence.
22. The Plaintiff failed to discharge the onus placed on her. There is no evidence that her financial situation deteriorated as a result of the death of the deceased, most importantly that during the lifetime of the deceased, the deceased was supporting herself.
23. The Plaintiff s case was not properly presented to can satisfy the fact that she discharged the onus placed on her.

ORDER

24. In the premises, I make the following order:

"Absolution from the instance is granted against the Plaintiff with costs.

MOSOPA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA (ACTING) GAUTENG DIVISION, PRETORIA

Date of hearing: 30 May 2017

Judgment Delivered: 20 June 2017

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