

SOUTH AFRICA / JUDGMENT

Sethole v Road Accident Fund (1487/2014) [2018] ZALMPPHC 11 (17 April 2018) [2018] ZALMPPHC 11

COURT

Limpopo High Court, Polokwane

BEFORE

Kganyago

CASE / FILE NUMBER

1487/2014

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REPUBLIC
OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO
DIVISION, POLOKWANE)
CASE
NO: 1487/2014
REPORTABLE
OF
INTEREST TO OTHER JUDGES
REVISED
17/4/2018
In

the matter between: MANTSIE
 PAULINAH
 SETHOLE PLAINTIFF
 And
 THE
 ROAD ACCIDENT
 FUND DEFENDANT

JUDGMENT

KGANYAGO J

- [1] On the 19th September 2013, the plaintiff's husband was involved in a motor collision wherein he passed away. The plaintiff is claiming loss of support in her personal capacity as well as representative capacity for her two children, Bridgette and Lebogang. At the time of the accident Bridgette was 16 years of age whilst Lebogang was aged 12 years. Bridgette has now reached the age of majority.
- [2] The merits of this matter have been disposed of and liability on the part of the defendant has been resolved on the basis of 100% in favour of the plaintiff's proven damages.
- [3] The parties have agreed that it will not be necessary to lead oral evidence but will dispose the matter on arguments only. Both parties have employed the services of the same actuary, the Independent Actuaries and Consultants. Both parties have also agreed to use the defendant's updated actuarial calculations.
- [4] The Court is called upon to determine two issues. The first issue is whether the immovable property at Lephalale should be considered as accelerated benefit for the purposes of calculating the damages suffered by the plaintiff. The second issue is the contingency to be applied in respect of the plaintiff and her two children. The parties have agreed that the Court should consider table 2 of the actuarial calculations which put the children's dependency until the age of 21.
- [5] The plaintiff's counsel has argued that accelerated benefit should be considered as an income that the family still receives even after the death of the deceased. According to the plaintiff that income will not be affected by the death of the deceased.
- [6] Plaintiff's counsel contends that the plaintiff and the deceased were married in community of property and the house in

Lephalale is their matrimonial home which she still lives in it together with her children. There is no income that is been derived

from that house. The plaintiff and the deceased had equal shares on that house, and it cannot be divided into two parts.

- [7] Counsel for the plaintiff submitted that the income which the deceased has been generating to maintain her and their children was derived from his salary. Therefore, the value of the house should not be considered for actuarial calculations as it is not an accelerated inheritance, but a joint matrimonial home which did not generate any income. The plaintiff relied on the cases of Legal Insurance Company Ltd v Botes 1963 (1) SA 608 (A) and also on that of Lambrakis v Santam 2002 (3) SA 710 (SCA).

[8] With regard to contingency deductions, counsel for the plaintiff argues that no contingency deductions should be applied. In the alternative he submitted that should the Court decide to apply contingency deductions, it should apply the normal contingency

deductions.

[9] Counsel for the defendant also relying on the same case law quoted by the plaintiff's counsel, submitted that it is settled law that inheritance that comes earlier should be deducted in order to avoid double compensation. Counsel for the defendant contends that the house in Lephalale is an earlier benefit and has got nothing to do with the income.

[10] With regard to contingency deductions, counsel for the defendant submitted that at the time the death of the deceased, the plaintiff was turning 51, whilst Bridgette was aged 16, and Lebogang aged 12. The defendant's counsel conceded that at that age, the chances of the plaintiff's remarriage were slim. He is therefore suggesting a contingency deduction of 10% for the plaintiff, 5% for Bridgette and 10% for Lebogang.

[11] The first issue to be determined is whether the house in Lephalale should be considered as an accelerated benefit for the purpose of assessing the damages suffered by the plaintiff and her two children. It is settled law that the dependents of the deceased should be compensated only for financial loss, and that they should not profit from the actions of the wrongdoer.

[12] In *Legal Insurance Company Ltd v Botes* 1963(1) SA 608 (A) 621 E-F the Court said:

"In regard to the motor vehicle, the next proceeds of the business and the cash in the estate, the trial court bore in mind that the respondent had a one half share in these by virtue of marriage in community. Mr Hoberman elaborated an argument inter alia as to the distinction between the benefit of obtaining the dominium, and the benefit of acceleration. But the trial Judge, looking at substance more than form, considered that for all practical purposes the death of the deceased caused the respondent to benefit by the accelerated acquisition of the half by his will. I do not think that this court can interfere, bearing in mind what may be termed a trial court's latitude of approach in cases of this nature."

[13] In *Lambrakis v Santam LTD* 2002 (3) SA 710 (SCA) at para 13 the Court said:

"Where property is inherited by a defendant in determining the extent of his loss or her loss the court should take into account not the value of the property but that of the accelerated accrual (cf Groenewald v Snyders 1966(3) SA 237 (A) at 248 C-F). This entails probabilities of the defendant having inherited the property should the deceased not have been killed through the wrongdoing of the defendant, but dying from a different cause at a later date."

[14] In the present case it is not dispute that the plaintiff and the deceased were married to each other in community of property. It is also not in dispute that the house in Lephalale was the joint matrimonial home of the plaintiff and the deceased, and further that the plaintiff and her children are continuing to live in that house which they regard as their only home.

[15] As the plaintiff and the deceased were married to each other in community of property, she has automatically acquired 50% share of the estate by virtue of marriage in community of property. The death of the deceased was the reason the plaintiff and her children got inheritance from the deceased estate.

[16] As per the liquidation and distribution account, the deceased and plaintiff's estate was made up as follows:

Assets

Fixed property

R 1230 000-00

FNB Cheque Acc

R 15434-61

Life Insurance

R 566 544-99

R 1811 979-60

Liabilities

R126 881-44

Balance available for

Distribution

R 1685 098-16

[17] The plaintiff inherited one half share by virtue of marriage in community of property and R 168 588-14 in terms of the Intestate Succession Act. The two children inherited R168 588-14 each in terms of the Intestate Succession Act.

[18] The actuarial calculations to determine the accelerated inheritance was based on the house in Lephalale only. Other benefits were not taken into consideration. The actuary came to the conclusion the plaintiff's inheritance amounted to R671 131-90, whilst that of the two children amounted to R111 855-32 each. Thereafter the accelerated inheritance for the plaintiff was

calculated as R181 104-00 whilst that of the two children as R111 855-32.

[19] The actuary did not deduct the full inheritance of the plaintiff as they allowed the possibility of the future inheritance had death not occurred, and also assumed that the value of the estate would have increased with inflation. With regard to the two children, the actuary deducted the full inheritance as according to them the possibility the children remaining dependent on the deceased had the accident not taken place was assumed to be negligible.

[20] The house in Lephalale even if it is a family house for the plaintiff and her two children, the inheritance from that house accrued to them as a result of the deceased death. The plaintiff and all her children inherited from the deceased estate as a result of his death, and in my view that amounted to an accelerated benefit. The actuary in determining their accelerated benefit did not take into account the value of the house in Lephalale, but their accelerated accrual. In my view if their accelerated benefit is not taken into consideration in assessing their damages, there will be double compensation, and they would have profited from the actions of the wrongdoer.

[21] Regarding contingencies, it is settled law that contingency deductions is a matter which falls within the discretion of the

Court. A Court may be entitled, in qualifying an amount of damages, to form an estimate of plaintiff's chances of earning a particular figure. This figure will not have to be proved on a balance of probability, but will be a matter of estimation. (See *De Klerk v ABSA Bank Ltd and Others* 2003 (4) SA 315 (SCA)).

[22] In relation to the plaintiff's she is 55 years age. Even though her chances of remarriage are slim, at that age, it cannot be said with certainty that her chances of remarriage are non-existence. Culturally she is part of the deceased family and might be required to remain unmarried. However, culture and custom also adapt with time. Therefore, in my view the 10% deduction suggested by the defendant's counsel will be appropriate under the circumstances.

[23] With regard to the two children, there is no evidence that they are having any form of disability wherein they will need any care for the rest of their lives. In my view, they were not going to be dependent on the deceased for the rest of his life. Taking into consideration their age and that they are in good health, I am of view that the deduction of 10% and 5% as suggested by the defendant's counsel will be appropriate under the circumstances.

[24] The parties have already agreed that table 2 of the actuarial calculations is the appropriate table to apply. The actuary did not apply any contingency deductions on their calculations. What remains is for me to factor the appropriate contingency calculations.

[25] In my view the following calculations are fair and equitable.

25.1 Plaintiff (Mrs MP Sithole)

R604 417-00

Less 10% contingency deduction

R60441-70

R543 975-30

25.2 Briget

R44 390-00

Less 5% contingency deduction

R2219-50

R 42170-50

25.3 Lebogang

Less 10% contingency deduction

R142 830-00

R 14 283-00

Total loss

R714 692-80

[26] In the result i make the following order:

26.1 The plaintiff succeeds in her claim for compensation against the defendant.

26.2 The defendant is to pay the plaintiff the sum of R714 692.80 representing her claim in both personal and representative capacity of her two children.

26.3 The defendant to pay the plaintiff's costs.

JUDGE OF THE HIGH COURT OF SOUTH AFRICA, LIMPOPO DIVISION

APPEARENCES

1. For the Plaintiff

:SA Monanyane Attorneys

2. For the Defendant :Noko Maimela Attorneys

3. Date Hearing

:5th March 2018

4. Date of Judgment :

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Prepared on 11 October 2026 · Esheria