

SOUTH AFRICA / JUDGMENT

De Vries N.O and Others v Road Accident Fund [2011] ZAWCHC 291; ; 1687/2007 (15 June 2011)

[2011] ZAWCHC 291

COURT

Western Cape High Court, Cape Town

BEFORE

Bozalek

CASE / FILE NUMBER

1687/2007

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IN

THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE HIGH COURT, CAPE TOWN)
CASE

NUMBER:

1687/2007

DATE:

15
JUNE 2011
In

the matter between:

JACO
DANIEL DE VRIES N.O. [IN HIS
CAPACITY
AS CURATOR AD
LITEM
FOR
LIZE-MARI MACDONALD]
.....1st
Applicant
PETRUS
MACDONALD
.....2nd
Applicant
SUME
MACDONALD
.....3rd
Applicant

and
THE
ROAD ACCIDENT FUND
.....Respondent

JUDGMENT

(Application for Leave to Appeal) BOZALEK, J The applicants in this matter seek leave to appeal against the order dismissing their claim for damages in the form of loss of support against the respondent, The Road Accident Fund, arising out of the death of their parents in a motor vehicle accident in 1994 Mr Jacobs, on behalf of the respondent, opposes the granting of leave to appeal and argues that in the event that it is successful the matter should be heard by the full bench. Mr Coetsee, on behalf of the applicants contends that the matter should be referred for the hearing of an appeal to the Supreme Court of

Appeal. This matter involves not only questions of fact relating to the past and projected income of the applicants' deceased parents but also the value of the estates left by the deceased and the level of maintenance or support which the applicants could reasonably have expected had their parents lived. Apart from these questions of fact or interpretations of evidence the matter raises what I regard as quite tricky questions of what constitutes accelerated benefits and how these are to be treated or distinguished in the computation of the applicants' claims for loss of support. I do not think much point is served in setting out the applicants' grounds of appeal since most, if not all, of the issues raised were dealt with in the court's judgment. In my view, however, having regard to these grounds there is a reasonable prospect that another court may arrive at a different conclusion on the validity of the applicants' claim as a whole. Although the principles relating to accelerated benefits may be simply stated, their application is by no means quite as straightforward. There is, furthermore, limited case law which sheds light on this particular area of the law of damages. For these reasons, I am persuaded that this is a matter which should enjoy the attention of the Supreme Court of Appeal and that obviously leave to appeal should be granted. In the result: The applicants are granted leave to appeal against this Court's judgment of 20 April 2011 on the grounds set out in their notice of appeal dated 24 May 2011

The costs of this application for leave to appeal will be costs in the appeal. BOZALEK, J

JUDGMENT

(Application for Leave to Appeal)

BOZALEK, J

The applicants in this matter seek leave to appeal against the order dismissing their claim for damages in the form of loss of support against the respondent, The Road Accident Fund, arising out of the death of their parents in a motor vehicle accident in 1994

Mr Jacobs, on behalf of the respondent, opposes the granting of leave to appeal and argues that in the event that it is successful the matter should be heard by the full bench. Mr Coetsee, on behalf of the applicants contends that the matter should be referred for the hearing of an appeal to the Supreme Court of

Appeal.

This matter involves not only questions of fact relating to the past and projected income of the applicants' deceased parents but also the value of the estates left by the deceased and the level of maintenance or support which the applicants could reasonably have expected had their parents lived. Apart from these questions of fact or interpretations of evidence the matter raises what I regard as quite tricky questions of what constitutes accelerated benefits and how these are to be treated or distinguished in the computation of the applicants' claims for loss of support.

I do not think much point is served in setting out the applicants' grounds of appeal since most, if not all, of the issues raised were dealt with in the court's judgment. In my view, however, having regard to these grounds there is a reasonable prospect that another court may arrive at a different conclusion on the validity of the applicants' claim as a whole. Although the principles relating to accelerated benefits may be simply stated, their application is by no means quite as straightforward.

There is, furthermore, limited case law which sheds light on this particular area of the law of damages. For these reasons, I am persuaded that this is a matter which should enjoy the attention of the Supreme Court of Appeal and that obviously leave to appeal should be granted.

In the result:

The applicants are granted leave to appeal against this Court's judgment of 20 April 2011 on the grounds set out in their notice of appeal dated 24 May 2011

The costs of this application for leave to appeal will be costs in the appeal.

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