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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 21984/2021

REPORTABLE: No

OF INTEREST TO OTHER JUDGES: No

REVISED: NO

31 January 2023

In the matter between:

A MS [. . .] OBO MINORS

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and uploaded on caselines electronic platform. The date for hand-down is deemed to be 31 January 2023

Summary: Application for summary judgment. Claim for loss of support for plaintiff and on behalf of the minor children. Motor vehicle accident. The deceased life stay-in partner of the plaintiff and father of the minor children.

JUDGEMENT

Molahlehi J

Introduction

[1] This judgment is about the quantum of loss of support of the plaintiff and two of her children arising from the death of their father due to the motor vehicle accident. The accident was caused by the negligence of the driver insured by the defendant. Ms AMS [. . .] instituted the proceedings in her personal capacity and representative capacity as the mother and guardian of two minor children, JJA [. . .] and BCA [. . .].

[2] It was not disputed that the minor children were born from the life partnership between the plaintiff and the deceased, Mr BH [...]. As indicated above, the only issue for determination, the parties having concluded the merits in favour of the plaintiff on a hundred per cent basis, is quantum.

[3] In *Paixao v RA*¹, the court held that our law does recognize the principle that two persons in a permanent life partnership could enjoy reciprocal duties of support, despite the absence of a formal marriage relationship. The duty, according to the court, derives from a tacit agreement.

[4] In *M v Road Accident Fund*,² the defendant was ordered to pay the plaintiff an amount of R 700 000-00, being for past and future loss of support for the plaintiff. In addition, the defendant was ordered to pay the plaintiff an amount of R 800 000-00, being for past and future loss of support for the plaintiff's minor children.

[5] In *Sizani v Road Accident Fund*,³ the plaintiff was awarded an amount of R206, 856.00 for loss of support arising from the untimely death of her son.

The background facts.

[6] The plaintiff lodged the claim for damages against the defendant on 6 March 2019 and served the summons of on the defendant in May 2021.

¹ 2012 (6) SA 377 (SCA)

² (28602/2017) [2020] ZAGPPHC 63 (18 February 2020).

³ (1895/2016) [2020] ZAECHMC 4 (13 February 2020).

[7] The defendant filed a notice to defend the claim on 21 June 2021. The litigation proceeded up to the stage of having to attend the pre-trial conference and the need to deliver the medical reports.

[8] After the first pre-trial conference, the plaintiff required a further pre-trial conference to deal with the issues raised in the first pre-trial conference.

[9] It is apparent that the defendant did not cooperate regarding the convening of the further pre-trial conference. This caused the plaintiff to file an application to compel compliance with attendance at the pre-trial conference. In this regard, the court, per Sardiwalla J, made the order compelling the defendant to attend a further pre-trial conference and answer the questions raised by the plaintiff in the first pre-trial conference. The order further compelled the defendant to deliver the medical-legal reports and to sign the joint Practice Note within ten days of the date of the order. The most important aspect of the order for this judgment is that:

"The plaintiff is granted leave to proceed with an application for striking out the defendant's defence on the trial date 28 November 2022 and apply for default judgment against the defendant."

[10] The trial was set down for a hearing on 18 November 2022. The defendant, on that day, applied to have the matter postponed. The reason for the postponement, according to the defendant's attorney, and deponent to the affidavit supporting the postponement, Ms. Van Zyl, was the fact that defendant required an opportunity:

"to properly investigate the loss of support claim and instruct an internal Industrial Psychologist to assess the matter to provide an alternative scenario for the calculation of the loss of support."

[11] The defendant contends in the affidavit supporting the application for the postponement of the matter that it would suffer prejudice if the application was refused.

[12] The principles governing the approach to an application for a postponement are well-established and known in our law. In refusing the application and making the order verbally on the day of the hearing, I applied those principles. I do, however, wish to emphasize that the reason provided by the defendant for the postponement is unreasonable and unacceptable. And more importantly, the defendant did not deal with why they failed to comply with the court order. I was also, more importantly, persuaded that an order of costs consequent to the postponement would not cure the prejudice that the plaintiff would suffer if the postponement was to be granted.

[13] Following the refusal to grant the postponement, the plaintiff applied to have the defendant's defence struck out. That application was granted. The plaintiffs then applied for a default judgment.

The default judgment

[14] The case of the plaintiff is that she and the minor children were dependent on the deceased for support. After the motor vehicle accident that took his life, there are no assets or funds from the deceased assets estate that they could depend on for support.

[15] Before the accident, the deceased was employed at Auto Dynamics Services and performed the role of an Artisan Assistance which the Industrial Psychologist regarded as being at Patterson B3. His weekly pay, according to the employer's certificate, was R1 200.00 per week, and he was entitled to overtime of R40. 00 the hour. It is suggested that he had been employed for about six months when the accident occurred.

[16] The actuarial calculation for the loss suffered by the minor children is based on the assumption of the Educational Psychologist that they (the children) would

each have depended on the deceased up to the age of twenty-two and half years. Each child's loss of income is to the date of his or her share of his or her father's income during the period from the date of the accident to the date of capitalization. Their future loss is capitalized value of each child's share of the father's income to 1 August 2022.

[17] The plaintiff's experts were:

- a. Jacobson Talmud – Industrial Psychologist
- b. Prof J Seabi – Educational Psychologist
- c. G Jacobson – Actuary.

[18] After applying the contingencies, the plaintiff's and the children's loss of support was calculated the as follows:

	PLAINTIFF	CHILD 1	CHILD 2	ALL DEPENDENTS
PAST LOSS				
GROSS LOSS:	R 32 786	R 87 695	R 87 695	
a. CONTINGENCY				
DEDUCTION:	R 1 639	R 4 385	R 4 385	
b. NET				
PAST LOSS:	R 31 147	R 83 310	R 83 310	R 197 767
FUTURE LOSS				
GROSS LOSS:	R 2 552 967		R 842 524	R 97 174
CONTINGENCY				
DEDUCTION:	R 382 945	R 105 316		R121 522
NET FUTURE LOSS:	R 2 170 022	R 737 208	R 850 650	R 3 757 88

TOTAL NET LOSS:	R 2 201 169 R 820 518	R 933 960	R3 955 647
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Past Contingencies:	5.0%	5.0%	5.0%
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Future Contingencies:	15.0%	12.5%	12.5%
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[19] The defendant appointed no expert and thus the plaintiff's expert reports remained unchallenged. I have in this regard considered the above actuarial calculations and the contingencies applied and found no reasons to question the same.

[20] In conclusion, I am persuaded having regard to the documents filed of record and the submissions made by the plaintiff's Counsel that the plaintiff's application for default judgment stands to succeed.

Order

[21] In the circumstances, I make the following order:

1. The merits were previously settled at 100% in favour of the Plaintiff.
2. Judgement is granted in favour of the plaintiff in her personal capacity and in her capacity as the representative of the minor children and accordingly the defendant shall pay the total of **R3 955 647** to the plaintiff.
3. The defendant shall pay the amount referred to above in paragraphs 2, into the Plaintiff's attorneys of record trust account with the following details:

Account Holder: Ehlers Attorney

Bank Name: FNB

Branch Code: 261550

Account Number: [...]

4. The Defendant shall be liable for interest on the aforementioned amount, save for the event of failing to pay on the due date, in which event the Defendant will be liable to pay interest on the outstanding amount at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.
5. The Defendant is ordered to pay the Plaintiffs taxed or agreed party and party costs on High Court scale, subject to the discretion of the Taxing Master, which costs will include, but will not be limited to the following:
6. The reasonable taxed fees of the following experts:

Jacobson Talmud – Industrial Psychologist.
Prof J Seabi – Educational Psychologist.
G Jacobson – Actuary.
7. The costs for accommodation and transportation (as per the prescribed AA rates) for the Plaintiff to attend a consultation at the Attorneys office on 17 November 2022 and to attend Trial on 18 November 2022.
8. The costs of an inspection in loco by the Plaintiff's attorney.
9. The costs of appointing an assessor to investigate merits and to obtain the SAPS docket.
10. The costs for preparation of Plaintiffs bundles of documents for trial purposes, as well as the travelling costs (as per the prescribed AA rates) and time spent to deliver these bundles and to load same on Caselines.
11. The costs for preparation of Plaintiffs bundles of documents for experts, as well as the travelling costs (as per the prescribed AA rates) and time spent to deliver these bundles.

12. The costs of Adv Jaco Bam briefed and appearing for trial, including but not limited to the following:

- 12.1 Preparation for Trial;
- 12.2 Consultations with Plaintiff's Attorney in respect of Preparation for
- 12.3 Trial;
- 12.4 Drafting heads of argument;
- 12.5 Day fee for 18 November 2022.

13 The Defendant is ordered to pay the Plaintiffs taxed and/or agreed party and party costs within 14 days from the date upon which the accounts are taxed by the Taxing master and/or agreed between the parties.

14 The Defendant shall be liable for interest on the taxed and/or agreed party and party costs, save for the event of failing to pay on the due date, in which event the Defendant will be liable to pay interest on the outstanding amount at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

15 There is a valid Contingency Fee Agreement signed by the plaintiff.

E Molahlehi
Judge of the High Court,
Gauteng Division, Pretoria.

Representation:

For the Plaintiff: Advocate Jaco Bam

Instructed by: Ehlers Attorneys

For the Defendant: Advocate Jessica Hanekom

Instructed by: State Attorney, Pretoria

Date of hearing: 18 November 2022.

Delivered: 31 January 2023.