

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE ~~YES~~ **NO**

(2) OF INTEREST TO OTHER JUDGES ~~YES~~ **NO**

(3) REVISED

DATE 4/5/11 SIGNATURE [Signature]

Case number 26292/09
 Date heard: 15 March 2011
 Date of judgment: ~~2011-05-04~~
06/05/2011

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
 (REPUBLIC OF SOUTH AFRICA)

In the matter between:

R.F. BARKER

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

HIEMSTRA AJ

[1] This matter concerns the plaintiff's claim for damages suffered as a result of the death on 8 September 2007 of her son, Hamish Llewellyn Barker, who was run down by a motor vehicle while cycling. She claims that Hamish had during his lifetime supported her in the amount of R1 000 per week. The defendant had conceded that it was liable for whatever damages the plaintiff may prove.

[2] The plaintiff alleged that she is unable to work to earn a living as a result of the trauma she had suffered as a result of her son's death. According to a medico-legal report, she presents with ongoing psychological difficulties following Hamish's death. They are summarised as follows:

- “1. *Unresolved mourning process concerning Hamish;*
2. *Wakes up every night just after midnight and cannot get back to sleep;*
3. *Daytime fatigue;*
4. *Recurrent nightmares/disturbed dreams about the event;*
5. *Has left Hamish’s room unchanged (can still feel Hamish’s presence in the house);*
6. *Not infrequently can hear Hamish calling her name;*
7. *Has developed panic attacks;*
8. *Not infrequently goes into a trancelike state (outside Hamish’s room)*
9. *Decrease in appetite and weight loss;*
10. *Difficulty in sustaining concentration;*
11. *Memory difficulties;*
12. *Emotional instability/tearfulness;*
13. *Decrease in proficiency and productivity;*
14. *Decrease in libido;*
15. *Loss of interest in significant activities;*
16. *Irritability.”*

[3] The author of the medico-legal report, a psychiatrist, Dr David A. Shevel, is of the view that the plaintiff should be able to return to any occupational functioning she had pursued prior to Hamish’s death within 12 months with recommended psychiatric treatment.

[4] Her previous work experience was office work in the hotel industry where her former husband worked as a chef. She also helped her husband in the kitchen. At some stage prior to 1988 she worked for Master Treads for about 1 year, earning R350 per month. She also ran the dairy of a Mr J.J. van Zyl, with whom she is currently living.

[5] The plaintiff has two other sons, Donald (born in 1989) and Rodney (born in 1998). Donald lives with his father, her former husband. Rodney lives with her. She has no contact with Donald and her former husband and does not know where they live. She tried to contact him to ask him to pay mainte-

nance for Rodney, but could not trace him. She receives a child support grant of R240 per month.

[6] As stated above, the plaintiff lives with Mr J.J. van Zyl to whom she refers as her fiancé. She testified that she had no intention of marrying Mr van Zyl because of her previous experience with an abusive husband. She did not, however, testify that Mr van Zyl had ever been abusive to her or her children. In fact, he came across as a solid and caring man in his testimony. He took the plaintiff and her family into his home in January 2006, and has supported them ever since. He had treated Hamish as a son, employed him and entrusted huge responsibilities to him. He said that Hamish had called him "Pa". In statements to the SAPS, he referred to Hamish interchangeably as his "son" and "stepson".

[7] Mr van Zyl testified that he is the owner of a construction company, CMJW Konstruksie, which carried out substantial construction projects. The company developed a chicken breeding facility, which Mr van Zyl eventually ran together with Hamish. The company had several other projects, such as the construction of an old age home and a dog unit for the South African Police Service. In addition he ran a substantial dairy farm for his own account, which the plaintiff managed for him.

[8] In August 2008 Mr van Zyl had an accident at the dairy which left him in a coma for 63 days. His subsequent treatment lasted for seven months. He had to learn to walk again and has only been back on his feet for a year. He reduced his dairy to only 15 cows. The construction company is now dormant.

He has a benign tumour on the brain, which he says may turn malignant at any time.

[9] Mr van Zyl testified that he had paid Hamish a salary of R2 000 per week. The plaintiff testified that Hamish had given her R1 000 per week, which she has now been deprived of. The only documentary evidence of Hamish's employment and salary is a letter written by Mr van Zyl on the letterhead of CMJW Konstruksie to that effect. Mr van Zyl said that after his accident, his construction company became dormant. His bookkeeper has all the documentation. The defendant had requested the plaintiff's attorneys to provide written proof of Hamish's employment and salary, but received no response.

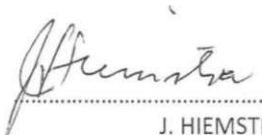
[10] The plaintiff, Hamish and Rodney had lived with Mr van Zyl in his home since January 2006. In reply to my specific question, the plaintiff testified that her relationship with Mr van Zyl started in December 2005. She changed that shortly afterwards and said that it had started after Hamish's death. Mr van Zyl also testified that their relationship had started after Hamish's death. That cannot be true. In an affidavit deposed to a few months after the accident, Mr van Zyl said that he had handed the telephone to his "fiancé" when the police phoned to inform them of the accident. He further said in the affidavit that he had told the police that Hamish was his son. In another affidavit he said he had told them that Hamish was his stepson. If the relationship had been purely platonic, then Hamish would not have called Mr van Zyl "Pa" and Mr van Zyl would not have told the police that Hamish was his son or stepson.

[11] The relationship seems to be a stable one. Mr van Zyl referred to the plaintiff in evidence as “my vrou” on at least one occasion. They are living together as man and wife. It is clear that Mr van Zyl supports the plaintiff in every respect. Her contribution to the common household is housekeeping and cooking for the family. She is clearly not destitute and dependent on the R1 000 that Hamish allegedly gave her every week. It must be remembered that Hamish also lived in the home. He earned money, and it is only to be expected that he would have paid rent or contributed to the expenses of the common household. The R1 000 per week cannot be regarded as support for his mother.

[12] I therefore find that the plaintiff has not discharged her onus to prove loss of support, either in the past or in the future. I find, however, that she has suffered severe trauma and requires psychiatric treatment. An award of general damages is therefore justified.

In the result the defendant is ordered to pay to the plaintiff:

1. The sum of R40 000 as general damages;
2. The defendant is ordered to provide an undertaking to the plaintiff in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in respect of future medical expenses.
3. Costs, including the costs of the expert witness.


J. HIEMSTRA
ACTING JUDGE OF THE HIGH COURT

Date of trial:	15 March 2011
Date of Judgment:	4 May 2011
Counsel for the plaintiff:	Adv E. Botha
Attorneys for the plaintiff:	Savage Jooste & Adams
Counsel for the defendant:	Adv D.P. Mogagabe
Attorneys for the defendant:	T.M. Chauke Attorneys