

FORM A
FILING SHEET FOR EASTERN CAPE, PORT ELIZABETH

PARTIES: **G I J KRITZINGER + 1 vs ROAD ACCIDENT FUND**

NOT REPORTABLE

- Case Number: **337/08**
- High Court: **EASTERN CAPE, PORT ELIZABETH**
- DATE HEARD: **18 & 19 MARCH 2009**
- DATE DELIVERED: **24 MARCH 2009**

JUDGE(S): **JANSEN J**

LEGAL REPRESENTATIVES –

Appearances:

- for the Applicant(s): **ADV FROST**
- for the Respondent(s): **MS AMERCIA**

Instructing attorneys:

- Applicant(s): **ROELOFSE MEYER INC**
- Respondent(s): **FRIEDMAN SCHEKTER**

CASE INFORMATION -

- ***Nature of proceedings:***
- ***Key Words:***
- ***Summary:***

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE, PORT ELIZABETH

NOT REPORTABLE

Case No.: 337/08

Date delivered: 24 March 2009

In the matter between:

GREGORY INGRID JACOBS KRITZINGER

First Plaintiff

MINIE JEAN KRITZINGER

Second Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

JANSEN, J:

This is an action for damages. The two plaintiffs were the parents of two girls who were tragically killed in a motor vehicle accident which occurred on 4 October 2003 at approximately 11 o'clock the evening in the vicinity of the family's house. The one child, Lee-Anne, was 24 years old at the time. The second one, Leigh, was only four years old. Lee-Anne was carrying Leigh in her arms, walking home from a party. They were apparently accompanied by Lee-Anne's boyfriend's father. They were standing on a pavement about to cross the road when the insured vehicle approached them, mounted the pavement and collided with the three persons who were all killed at the scene of the collision. Shortly after the collision the plaintiffs were informed about it by one of Lee-Anne's friends. They proceeded to the scene of the accident to discover that their two daughters had been killed. The following day they had

to go to the mortuary to identify the bodies of the two children. The children were buried a week after their death and the plaintiff experienced shock, horror and continued disbelief that they had tragically lost their two children.

The plaintiffs instituted an action for damages against the defendant. With the exception of the first plaintiff's claim for general damages all the other claims were settled between the parties. The nature and extent of the plaintiffs' claims and the agreement between the parties in respect thereof appears from paragraphs 1-6 of this Court's order set out below. I need not say anything more about it.

For general damages the first plaintiff claims an amount of R200 000,00 for shock and trauma experienced by him caused by the death of his two children. His original claim was for R150 000,00.

Only one witness was called to testify in this matter. It was Mr Ian Meyer, a clinical psychologist who testified on behalf of the plaintiffs. His evidence was uncontested. It was not disputed that the first plaintiff suffered severe emotional shock and trauma as a result whereof he is suffering from chronic bereavement reaction with protracted grief. He is suffering from a chronic post traumatic stress disorder and a chronic major depressive disorder. He has re-occurring memories and visual flashbacks and nightmares of the collision and the death of the deceased children. He avoids as far as possible family functions. He avoids attending church because that reminds him of the funeral service of his children. He has become emotionally withdrawn. He is

suffering from a sleep disorder. He is also suffering from headaches which he experiences on an almost daily basis. The first plaintiff was 52 years old at the time of the incident. He is now 58 years old. Two psychological assessments of the two plaintiffs were performed by Mr Ian Meyer. The first assessment was conducted on 13 March 2007. On that occasion Mr Meyer concluded that both plaintiffs have developed chronic psychiatric and psychological sequelae, both presenting with complicated protracted bereavement reactions with inconsolable grief in association with post traumatic stress disorder and major depressive disorder. The first plaintiff's mental state is reflective of more distress and discontrol than that of the second plaintiff, presenting with a picture of emotional incontinence that has probably been exacerbated by his premorbid stroke.

Mr Meyer had a follow-up consultation with the plaintiff's to assess whether there had been any significant change in their circumstances since the previous assessment two years prior. The second assessment took place on 13 February 2009. When Mr Meyer discussed the need for a re-assessment with the first plaintiff he immediately burst into tears and struggled to contain his overwhelming emotionality. This continued throughout the period of the assessment of the first plaintiff. This was a very difficult interview in which Mr Meyer was intensely aware of the plaintiff's grief and suffering. When asked whether there had been any improvement in his circumstances the first plaintiff responded that he has subjectively become worse. On re-assessment Mr Meyer found the first plaintiff's mental state significantly more compromised than that of the second plaintiff. The first plaintiff still presents

with a picture of grief and emotional incontinence that has probably been exacerbated by the sequelae of the premorbid stroke that he sustained in 2002, although he had reportedly made a satisfactory adjustment to his diminished life circumstances subsequent to the stroke and earlier retirement on medical grounds. It was mentioned by Mr Meyer that the plaintiff, who had a premorbid history of hypertension and peptic ulceration, had a relapse in terms of the ulceration subsequent to the death of his children and was hospitalised at the Mercantile Hospital. It was Mr Meyer's view that the first plaintiff's peptic ulceration was probably triggered post-trauma by a combination of stress and the frequent use of medication. Mr Meyer further expressed the view that the first plaintiff's mental state remained uncontained and that he is still presenting with a picture of emotional incontinence and discontrol, characterised by a diagnosis of post traumatic stress disorder and a co-morbid major depressive disorder. He needs to be referred to a psychiatrist for an assessment, treatment and possible hospitalisation. The first plaintiff's psychiatric/psychological condition is chronic in nature and the medium to longer term prognosis is very poor considering his co-morbid pathology. This is complicated by the effects of his stroke which exerts a detrimental synergistic effect on his mental state and further adjustment and is contributory to his incontinent emotional presentation. He will have to be on medication, probably for the rest of his life.

I have been referred by counsel on behalf of the plaintiffs to several decisions where damages were awarded to plaintiffs for emotional trauma suffered. Not one of the cases, however, was directly in line with the instant case. In any

event, each case has to be decided upon its own facts. It remains difficult. The first plaintiff's initial claim for general damages before the amendment was for an amount of R150 000,00. When regard is had to all the circumstances of the case, that amount of R150 000,00 appears to me to be a sufficient amount for general damages suffered by the first plaintiff.

In the result, the following order is made (paragraphs 1-6 by agreement):

1. Defendant is to effect payment in settlement to First Plaintiff in the sum of R6 800,00 in respect of funeral expenses and R8 704,02 in respect of past medical expenses within fourteen days from date of this Order.
2. Defendant is to effect payment in full and final settlement to Second Plaintiff in the sum of R120 000,00 as and for general damages within fourteen days from date of this Order.
3. Should the capital amount in paragraph 1 and 2 above not be paid within fourteen days from date of this Order, Defendant shall be liable for payment of interest on the said capital calculated at the legal rate of 15,5% per annum as from date due until date of payment.
4. Defendant shall furnish First Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, for 100% of the costs of future accommodation in a hospital or nursing home, or treatment of or rendering of a service to him or supplying of

goods to him in consequence of the injuries sustained by him as a consequence of the death of his two children as a result of the motor vehicle collision on 4 October 2003 and the sequelae thereof, after such costs have been incurred and upon proof thereof.

5. Defendant shall furnish Second Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, for 100% of the costs of future accommodation in a hospital or nursing home, or treatment of or rendering of a service to her or supplying of goods to her in consequence of the injuries sustained by her as a consequence of the death of her two children as a result of the motor vehicle collision on 4 October 2003 and the sequelae thereof, after such costs have been incurred and upon proof thereof.
6. Defendant shall pay the costs of the suit of First Plaintiff and Second Plaintiff, as taxed or agreed, on a party and party scale together with interest thereon at the legal rate of 15,5% per annum as from a date fourteen days after taxation or agreement. Such costs are to include:
 - 6.1. The reasonable qualifying expenses of the following expert witnesses:
 - 6.1.1 Ms Heather April, clinical psychologist;
 - 6.1.2 Mr Ian Meyer, clinical psychologist.

7. Defendant is to effect payment to first plaintiff for general damages an amount of R150 000,00 within 14 days from date of this order and interest on the said amount calculated at the legal rate of 15,5% per annum from date due until date of payment.

J C H JANSEN

JUDGE OF THE HIGH COURT