IN THE HIGH COURT OF SOUTH AFRICA NOT REPORTABLE

EASTERN CAPE, PORT ELIZABETH

Case No.: 731/08
Date Heard: 7-9 March 2011
Date Delivered: 17 March 2011

In the matter between

MERCIA SOPHIE JONATHAN First Plaintiff
Obo SHERNICE LAUREN JONATHAN

SHERRON JONATHAN Second Plaintiff

and

THE ROAD ACCIDENT FUND Defendant

JUDGMENT

EKSTEEN J:

[1] One Lawrence Jonathan (the deceased), a taxi operator, died in and as a result of a motor vehicle collision which occurred on 9 September 2004. The first plaintiff had previously been married to the deceased. The marriage was terminated by divorce during 1999 after three children had been born of the union.

[2] The first plaintiff herein sues the defendant in her representative capacity for and on behalf of Shernice Lauren Jonathan (Shernice), the youngest child born of the union with the deceased, for the loss of support which she alleges that Shernice was entitled to receive from the deceased and which she in fact would have received but for his demise. The second plaintiff was also born of the marriage between the first plaintiff and the

deceased and sues herein on the same cause of action in her personal capacity, she having now attained the age of majority.

[3] The merits of the plaintiffs' claim relating to the negligence giving rise to the death of the deceased is no longer in issue. By agreement between the parties an order of court was granted on 18 August 2009 which recorded that "the defendant fully concedes the merits of the plaintiffs' claims". What is in issue in these proceedings is accordingly the extent of the damages which the plaintiffs are able to prove that they are entitled to receive in consequence of the death of the deceased.

[4] The claim by a dependant for loss of support has historically been regarded as a right of property. The deprivation of which by a wrongful act of a defendant would found a claim for patrimonial damages. As patrimonial loss is a *sine qua non* for any action under the *lex Aquilia* the action can only succeed where there has been a legal duty on the deceased to maintain the plaintiff and where he in fact did so. (See *Corbett and Gauntlett: The Quantum of Damages – Vol 1* p. 60 and the authorities referred to therein.)

[5] It is not in dispute that both Shernice and the second plaintiff are the children of the deceased born from the union with the first plaintiff. The legal obligation of the deceased to maintain them was accordingly formally admitted in a pre-trial conference held on 2 November 2010. In evidence before me it was not disputed that the deceased did in fact contribute to the maintenance of Shernice and the second plaintiff until his demise in

September 2004 and it was formerly admitted at a pre-trial conference that both Shernice and the second plaintiff would have required such maintenance and that the deceased would have continued to provide such maintenance until each of them reached the age of 21.

[6] Two matters which underlie the assessment of damages remain in issue, namely, the extent of the maintenance which the deceased did in fact contribute to Shernice and the second plaintiff respectively and the ability of the deceased to have continued to pay such maintenance.

[7] Much of the argument before me centres on submissions of Mr ***Dala***, for the defendant, that there is simply not sufficient evidence before me to make any assessment. He accordingly asks that I should absolve the defendant from the instance. In the light of this it is perhaps desirable first to consider the approach which is to be adopted in a matter of this nature before I turn to consider the actual evidence.

[8] I have set out above that the right of the dependants of the deceased to receive maintenance and support is not in issue nor is it disputed that the deceased made such contributions. It is accordingly manifest that each of the plaintiffs have in fact suffered patrimonial damages. In ***Hersman v Shapiro and Co.*** 1926 TPD 367 Stratford J at 379 said in this regard:

> "Monetary damages having been suffered, it is necessary for the court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the court is little more than an estimate; but even so, if it is certain that

> pecuniary damages have been suffered, the court is bound to award damages".

[9] This approach holds good today and was confirmed in the Appellant Division of the Supreme Court of South Africa, as it was then known, by Holmes JA in ***Anthony and Another v Cape Town Municipality*** 1967 (4) SA 445 (A) where the learned Judge is reported as saying at 451B-C:

> "I therefore turn to the assessment of damages. When it comes to scanning the uncertain future, the Court is virtually pondering the imponderable, but must do the best it can on the material available, even if the result may not inappropriately be described as an informed guess, for no better system has yet been devised for assessing general damages for future loss."

(Compare also ***Southern Insurance Association v Bailey NO*** 1984 (1) SA 98 at 113G-114A.)

[10] I am alive to the fact that the evidence which is criticised in the present matter is, at least in part, of past events. It is, however, as well to bear in mind the general basis of the assessment which is in issue in an action such as the present. It was summarised by Innes CJ in ***Jameson's Minors v CSAR*** 1908 TS 575 at 602 where the learned Chief Justice stated:

> "The general principles which should guide us are plain. I need only refer to Voet, who lays down the rule very clearly. He says (9.2.11): 'According to the modern practice the scope of this action (i.e., an action by the widow or children of a man who has been killed through the default of another) has been extended, in so far as an action is now allowed to the wife and children of any husband or father killed through another's default, for such damages as the equity of the judge will determine, account being taken of the maintenance which the deceased would have been able to supply, and had usually supplied, out of his labour to the wife and children,

> or to other near relatives'. I do not think that Voet intended to restrict, or that we should restrict, the word 'maintenance' – *victus* – to the supply of mere necessaries of life. It must include all the material advantages, conveniences, comfort and support, which the father would have afforded the claimants, but for his death. The language used shows that the court must pay regard to what the deceased has been used to supply in the past – that is, to the station in life of the parties, the comforts, the conveniences and advantages to which they have been accustomed."

[11] In respect of the method of assessment Innes CJ, on considering the Roman-Dutch authorities, said this in ***Hulley v Cox*** 1923 AD 234 at 243-244:

> "Some authorities consider that the calculation should be based upon the principle of annuity … Voet, on the other hand, favours a more general estimate. Such damages, he thinks, should be awarded as the sense of equity of the Judge may determine, account being taken of the maintenance which the deceased would have been able to afford and had usually afforded to his wife and children …. That would seem the preferable view as giving a greater latitude to deal with varying circumstances. It is at any rate desirable to test the result of an actuarial calculation by a consideration of the general equities of the case."

[12] It is now accepted that the court is not bound by any one method of calculation, (compare ***Southern Insurance Association v Bailey NO***, supra at 114C-E) however, the general approach of our courts is usually to utilise the annuity basis of calculation and thereafter to adjust the figure obtained in accordance with the general equities.

[13] What clearly emerges from the aforegoing is that this is not the kind of case where the evidence is required to be of such a nature as to establish the quantum of damages with mathematical precision. In the final analysis the court will award such damages as the equity of the Judge will determine, having regard to the maintenance which the deceased would have been able

to provide and which he use to provide.

[14] The approach to the evidence which was set out in ***Hersman v Shapiro and Co*** *supra* and in ***Anthony's*** case to which I have referred will hold good only where the plaintiff has tendered the best evidence which she can reasonably be expected to lead in the circumstances of the case (see ***Esso Standard SA (Pty) Ltd v Katz*** 1981 (1) SA 964 (A) at 970E).

[15] The evidence establishes that the first plaintiff was divorced from the deceased in 1999. She has since lived apart from the deceased until he died. In these circumstances she has no direct knowledge of the earnings of the deceased and she had no access to documentation in that regard. In response to a notice in terms of Rule 35(3) of the Uniform Rules of Court the first plaintiff records that she has no knowledge of whether the deceased rendered tax returns or not. This is fully explained by the nature of their relationship at the time. The second plaintiff has since the divorce resided with the first plaintiff and accordingly suffers from the same deficiency.

[16] The plaintiffs did however call one Shane Fortuin to testify. Fortuin confirms that the deceased operated a taxi which he states was a very beautiful taxi which was well kept. Fortuin says that he was employed by the deceased as his "sliding door operator". The taxi service operated six days a week. Fortuin was responsible for collecting the fare from passengers as they boarded the taxi and accordingly he has firsthand knowledge of the takings. He controlled the money and would hand over the takings to the deceased at

the end of each day. He testified that they took about R1 400-R1 600 per day as fares. From this Fortuin says must be deducted the daily expenses which varied from approximately R610–R660 per day. The expenses for which he allows are R400 in respect of petrol, R150-R200 in respect of the remuneration paid to himself and a further R60 per day for food.

[17] In cross-examination Fortuin concedes that there are additional expenses to operating a taxi which are of an irregular nature. The vehicle requires to be serviced from time to time and tyres need to be replaced from time to time. Fortuin and the deceased used to service the vehicle themselves when necessary. The tyres which were fitted to the vehicle at the time cost R2 500 for a set of four tyres. He acknowledged too that when they serviced the vehicle the vehicle was of necessity out of operation which would have a negative effect on the income of that day. In addition, the witness says, that the deceased had a very good relationship with his daughters and there were times that he would take time out of work to visit his daughters and to attend to their needs.

[18] Mr ***van Rooyen*** on behalf of the plaintiffs has asked me to accept, for purposes of a calculation, on the strength of this evidence that the deceased earned R790 per day (i.e. R1 400 less R400 for petrol; less R150 for Fortuin's salary; less R60 for food). This calculation clearly has no regard to the irregular expenses which attach to the running of a motor vehicle nor does it have regard to the occasions when the taxi is not in operation. Some allowance must of course be made for these expenses, however, having

regard to the manner of calculation of the claim which Mr ***van Rooyen*** urges me to accept, as will appear below, it seems to me to be immaterial.

[19] On an acceptance of the evidence of Fortuin and adopting the income figure of R790 per day as a starting point, the deceased would have generated a monthly income of some R19 750 per month had he operated for 25 days of the month. It is immediately apparent that if I were, for illustrative purposes, to reduce the estimated earnings by a further, say 25%, which seems to me to be excessive, to provide for the irregular expenses postulated above, the deceased would still have retained net earnings of nearly R15 000 per month. The plaintiffs contend that the deceased paid to the plaintiffs' household approximately R5 000 per month as will appear more fully below.

[20] In all the circumstances given the manner in which Mr ***van Rooyen*** urges me to quantify the claim, which is more fully set out below, the evidence clearly establishes that the deceased did have the ability to have paid the maintenance which the plaintiffs claim that he did pay. I pause to mention that none of the figures put forward by Fortuin have in any way been challenged.

[21] I turn to consider the evidence of the maintenance which the deceased in fact paid to the plaintiffs.

[22] The first plaintiff, as I have recorded above was divorced from the deceased in 1999. There is no suggestion that any order was contained in

the decree of divorce which would entitle her to maintenance. There was therefore no duty on the deceased to maintain her. She testifies, however, that she and the children moved out of the common home after the divorce and took up their residence, initially with her mother at 44 Highfield Road, Shauderville. The first plaintiff occupied these premises together with Shernice, who was just 5 years old at the time, the second plaintiff, who was 13 years old and Shervago, her eldest son born of the union with the deceased, who was 16 years old at the time. She states that notwithstanding the fact that the decree of divorce did not provide for any maintenance to be paid by the deceased to her or the children born of the marriage, he continued to provide in every need which she and the children had.

[23] The objective facts which emerge from the evidence reveals, however, that in September 1999, some six months after the issue of the decree of divorce an order was made by the Magistrate for Port Elizabeth in terms of the Maintenance Act, 23 of 1963 which compelled the deceased to pay maintenance in the sum of R700 per month to the first plaintiff in respect of the three children. In terms of the order this sum was to be paid at the Magistrate's Court. Shortly hereafter, it would appear early in 2000, the first plaintiff lodged a complainant with the magistrate claiming that the deceased had not paid the amounts due under the order. The deceased then paid up the amount of the apparent arrears as reflected in the records of the maintenance officer.

[24] These events are of course inconsistent with her evidence that the

deceased continued to provide voluntarily in all their needs. The plaintiff was, understandably, confronted with these facts under cross-examination. She explained that at that time she was still somewhat hurt by the events which had led to the divorce. The deceased had acquired a girlfriend and accordingly, in spite, she hauled him before the maintenance court. She states that although the deceased was in fact paying more than R700 a month towards his children at the time she agreed to an order for R700 per month in the knowledge that he would continue to pay for all their needs. After the order was made she says that she agreed with the deceased that he may pay the money directly to her rather than to pay it at the Magistrate's Court. In this manner the records of the maintenance officer showed a shortfall by virtue of the deceased's failure to deposit the money with the Magistrate's Court. The first plaintiff says that she, again in spitefulness, lay a complaint, which was false, that he had failed to comply with the order.

[25] The first plaintiff's explanations in this regard are unconvincing and I have little hesitation in rejecting them as false. Clearly there was a measure of friction surrounding the payment of maintenance in the initial period following the divorce. The matter does however end there.

[26] The first plaintiff testified that at some stage prior to the passing of the deceased she and her children moved to a new house at 29 Britton Crescent, Bethelsdorp. This was a house which belonged to one Thysse. They rented the house from Mr Thysse for R750 per month. The first plaintiff was unemployed at the time. Shervago reached the age of majority in 2001, but

as he was unemployed he remained entirely dependent upon the deceased. The two daughters were still at school. At this time, and until he died the deceased paid for their rental and provided for all their living expenses.

[27] Whatever the position may have been in the initial period following upon the divorce the first plaintiff's evidence that the deceased paid for all their needs prior to his death enjoys considerable support in uncontested evidence. The evidence of the first plaintiff is corroborated by the evidence of the second plaintiff in regard not only to the contributions but also to the extent thereof. Both the first plaintiff and the second plaintiff state that the deceased paid the rent directly to Mr Thysse. Mr Thysse also testified. He confirms that the deceased paid the rental of the home occupied by the first plaintiff and her children directly to him. He states too that Shervago had a child with his daughter. Because Shervago was still unemployed the deceased voluntarily assisted with the maintenance of this child too. The evidence of Mr Thysse was not challenged at all and is entirely uncontested.

[28] The first plaintiff testified that apart from paying the rent in respect of the house the deceased also paid other expenses. In this regard she states that the home which they occupied was fitted with an electricity box for prepaid electricity. This too is confirmed both by Thysse and second plaintiff. They consumed approximately R50 of electricity per week, which the deceased paid for. Her evidence in this regard is corroborated by the second plaintiff who was not challenged in this regard. A number of municipal water accounts in the name of the first plaintiff were produced in evidence which

span the period September 2003 to July 2004. The average charge in respect of this service is R92 per month. The first plaintiff states that they expended on average about R800 per week on food and groceries. All of these expenses, she says, were funded by the deceased. The expenses incurred and the source of the money in respect of the food and groceries is equally corroborated by the second plaintiff. The evidence of the second plaintiff has again not been challenged.

[29] Both the first plaintiff and the second plaintiff have testified that they conducted three clothing accounts prior to the death of the deceased, one at Edgars, one at Foschini and one at Truworths. All the members of the household purchased clothing on these accounts and the deceased also purchased clothing on the account at Edgars. The deceased provided money to pay the monthly instalments in reduction of these accounts and the first and second plaintiff paid the accounts. There is some discrepancy in the evidence as to the sum paid on the Edgars account, which in any event, included purchases for the benefit of the deceased. This account has accordingly been left out of reckoning in the calculation of the plaintiff's claim. It is not in dispute that the deceased provided R400 per month and R300 per month respectively for payment of the Foschini and Truworths accounts.

[30] Both the second plaintiff and Shernice were at school at the time of the death of the deceased. A number of receipts have been provided to show the payment of school fees in respect of the second plaintiff. It is the evidence of both the plaintiffs that the deceased provided the money for the payment of

the school fees. The first plaintiff states that the deceased paid the school fees in respect of Shernice as well. The school fees amounted to R400 per annum. In addition to the school fees the evidence of both the first plaintiff and the second plaintiff is that both the second plaintiff and Shernice commuted from home to school by taxi. The taxi fare in respect of the second plaintiff amounted to R20 per day and that in respect of Shernice to R10 per day. The funds for the payment of these transport costs were provided on a regular basis by the deceased. In addition to these contributions certain irregular expenses, such as medical treatment of the second plaintiff and Shernice was always paid for by the deceased. No record exists in this regard.

[31] Virtually all this evidence in respect of the maintenance contribution made in 2004 has not been seriously disputed. The deceased also had an illegitimate daughter, one Lee-Ann du Preez. She was the same age as the second plaintiff. It is apparent that Ms du Preez had a very good relationship with the other children of the deceased. She too testified. Her evidence does not take the matter much further, save that she states that the deceased also contributed to her maintenance by a regular payment of R300 per month to her mother. Over and above this, when large irregular expenses arose, such as a dress for her matric farewell dance, she says that he was always ready to help. This benevolence of the deceased towards his illegitimate daughter accords with the plaintiff's evidence of the deceased's voluntary contributions to their household. There is no evidence to contradict such contributions.

[32] The uncontradicted evidence accordingly establishes that the deceased made the following contributions to the household of the first plaintiff:

Rental	R750 per month
Municipal water account	R92 per month
Electricity	R200 per month
Food and Groceries	R3 200 per month
Foschini Account	R400 per month
Truworths Account	R300 per month
Total	R4 942 per month

(For reasons set out above the Edgars account is excluded from the calculations.)

[33] In addition to the household expenses established the plaintiff has also testified that the deceased paid the school fees and transport fees in respect of Shernice and the second plaintiff which amounts were expended, of course, on the two daughters exclusively.

[34] Second plaintiff was 18 at the time of the death of the deceased and in fact in the process of writing her matriculation examinations. She testified that she had intended to proceed to study for a health and skincare qualification after completing her schooling. This required three years of study and, she

testified, that she had already discussed it with the deceased prior to her death. But for the demise of the deceased he would have paid the fees associated with these studies. It is therefore apparent that the deceased's contribution to her maintenance would in all probability have increased after she left school had he not died. I shall revert to this aspect below.

[35] I have recorded above that the deceased's eldest son Shervago, although an adult, was a member of the household of the first plaintiff and remained dependent upon the deceased until he died. The evidence establishes that Shervago obtained employed during 2008 and he is therefore assumed to have become self-supporting in 2008.

[36] The plaintiff's have handed in a number of actuarial calculations done by Mr Gerard Jacobson, an actuary. Mr ***Dala***, on behalf of the defendant admits the soundness of the actuarial methodology and the accuracy of the calculations and consented to the reports being handed in in evidence without the need to call Mr Jacobson. He has recorded that the factual assumptions which underlie the calculations are not admitted.

[37] The calculation which Mr ***van Rooyen*** urges me to adopt assumes that the deceased earned R790 per day at the time of his death and that such income would have continued and increased thereafter in line with the consumer price index. The R790 per day is taken from the evidence of Fortuin. For the reasons set out before I do not think that the accuracy of the calculation of this figure is material. What is clear from the evidence is that

the deceased had an adequate income from which to pay that which was paid and there is no reason to believe that such income and contribution would not have increased in accordance with inflation.

[38] Mr ***van Rooyen*** argues that I should accept that the deceased's contribution to the maintenance of Shernice and the second plaintiff was limited to their *pro rata* share of the joint household expenses which the deceased provided, together with their school fees and transport costs. The contribution made to the household expenses, as set out above, amounts to R4 942 per month. The household expenses were, however, not utilised exclusively by the second plaintiff and Shernice. Whilst the deceased had no obligation to maintain the first plaintiff she in fact benefited from the contributions made by the deceased. Similarly Shervago was an adult, but, being unemployed, remained dependent upon the deceased. The second plaintiff was 18 at the time that the deceased died. She too was an adult at the time. As earlier recorded it is, however, agreed that she would, but for the death of the deceased, have remained dependent upon the deceased until the age of 21. The household accordingly consisted of three adults and Shernice.

[39] In the absence of meticulous records of precisely how the family expenditure was divided our courts have accepted a convenient formalism which attributes one part to each child and two parts to each parent (compare for example ***Groenewald v Snyders*** 1966 (3) SA 237 (A) at 247F-H). Mr ***van Rooyen*** has urged me in this matter to apportion the household expenditure

in similar fashion with one part to Shernice and two parts to each of the other occupants. The second plaintiff turned 21 on 6 November 2007, and in accordance with the agreement between the parties, she would thereafter have been self-sufficient. Shervago became self-sufficient, as set out above, in 2008. In the absence of an accurate recordal of the date of his employment Mr ***van Rooyen*** argues that it would be appropriate to accept that he became independent on 1 July 2008.

[40] I find the approach suggested by Mr **van Rooyen** commendable. On this basis Mr Jacobson has calculated Shernice's loss at R248 283 and that of the second plaintiff at R60 441.

[41] The thrust of the argument on behalf of the defendant is that there is insufficient evidence to establish such a loss. It is argued firstly that there is insufficient evidence to establish the earnings of the deceased. I do not agree. Firstly, as recorded above this is a matter where it has indisputably been established that monetary damages have been sustained. In such cases the court is called upon to do the best it can with the evidence which may often be inconclusive, provided that the plaintiff has led the best evidence that it could reasonably be expected to lead. (See ***Hersman v Shapiro and Co.*** *supra*; and ***Anthony and Another v Cape Town Municipality*** *supra*). Mr ***Dala*** argues that the plaintiff could and should have called an expert to testify in respect of the running costs of the deceased's vehicle. That he could have done provided that evidence was available as to the mileage covered by the deceased's vehicle. Such evidence is not available. Instead

the plaintiff called Mr Fortuin who was able to give firsthand evidence of actual earnings and of actual costs associated with the daily operation of the vehicle. In respect of the irregular expenses Mr Fortuin was able to provide actual expenditure which would have been incurred from time to time in respect of, for example, replacement of tyres. It is true that not all the expenses which may be incurred are covered by his evidence, however, I consider that it is indeed the best evidence which the plaintiff could reasonably have been expected to tender in the circumstances. Secondly, given the manner of calculation of the loss which Mr ***van Rooyen*** proposes the exact extent of the deceased's income is not decisive. What is of importance is the question whether the deceased's income was sufficient reasonably to have made the contributions claimed. It seems to me that the evidence clearly establishes such a sufficiency. The evidence relating to the extent of his actual contributions remained largely unchallenged. For these reasons I consider that the evidence is sufficient to found a basis for an actuarial calculation which can usefully be made (compare ***Southern Insurance Association v Bailey NO*** *supra* at 114C-F).

[42] Mr ***Dala*** argues further that the calculations are incorrect because the evidence shows that the first plaintiff was in fact employed at least from 2006 to 2007. The first plaintiff makes no claim in respect of her maintenance. Her earnings are entirely irrelevant to the claim of the children. What is in issue is the "damages as the equity of Judge will determine, account being taken of the maintenance which the deceased would have been able to supply, and had usually supplied, out of his labour" to the plaintiffs. (Compare ***Jameson's***

Minors v CSAR *supra*.)

[43] In addition Mr ***Dala*** argues that the evidence establishes that the second plaintiff held down employment from 2006 to 2008. These earnings he argues should be accounted for and it should be accepted that she became self-sufficient in 2006. This argument is problematic for the defendant. Firstly it has been agreed that, but for the death of the deceased, the second plaintiff would have been entitled and would have continued to receive maintenance and support to the age of 21. The defendant is bound by this agreement. Secondly, the argument fails to recognise the nature of the action. What the plaintiffs have lost is a right – the right to support. The plaintiffs are not required to mitigate their loss by going out into the job market and finding employment at a time when they were entitled to receive such support (compare ***Peri-Urban Areas Health Board v Munarin*** 1965 (3) SA 367 at 376; ***Legal Insurance Company Limited v Botes*** 1963 (1) SA 608 (A); and ***Groenewald v Snyders*** *supra*).

[44] I consider that the assumptions which underlie the calculations of Mr Jacobson have been established in evidence with sufficient certainty to found a useful basis for an actuarial calculation. What remains accordingly is to adjust the figure, if need be, in accordance with the general equities of the case.

[45] Mr Jacobson has provided certain contingency deductions in his calculation purely for illustrative purposes. Mr ***Dala*** argues that by virtue of

the uncertainties in some of the assumption made for purposes of calculation I should provide for a greater contingency reduction. It is correct, as pointed out above, that there are a number of uncertainties relating to the actual net earnings of the deceased prior to his demise. Given the manner of calculation adopted by Mr ***van Rooyen*** these seem to me to be immaterial. The calculation does not proceed on a consideration of the distribution of the net income of the deceased but merely on the sum in fact paid to the plaintiffs' household. Whatever his actual earnings were the evidence clearly shows that he earned more than sufficient to afford these payments. These uncertainties should accordingly, on the facts of this case, not be given undue weight.

[46] Finally, when considering contingencies, it would be wrong to "regard the fortunes of life as being always adverse: they may be favourable". (See ***Southern Insurance Association v Bailey NO*** *supra* at 117B.)

[47] On a consideration of the evidence I consider that there are a number of factors which may indicate that the calculation made of the alleged loss is somewhat conservative. Firstly, second plaintiff had discussed with the deceased her tertiary educational plans and he had undertaken to fund such studies. This his earnings indicate that he could do. No allowance is made for such an increased level of support during the second plaintiff's tertiary education. Similarly, Shernice may well undertake tertiary studies which would have resulted in an increased contribution to her maintenance by the deceased. Secondly, there is evidence of irregular contributions made by the

deceased which have not been included in the assessment. The payment of medical treatment as and when it was required is an example. Thirdly, the payment of the Edgars account, which at least in part was in respect of the second plaintiff and Shernice has been excluded from the calculation.

[48] Given the duration of the period of calculation of the past losses I consider that these positive contingencies outweigh the general negative contingencies of life. Accordingly I do not intend to adjust the figure arrived at by Mr Jacobson for losses accrued prior to trial at all. In respect of Shernice's future loss which is calculated up to 2015 a 5% reduction would in my view adequately provide for the vicissitudes of life.

[49] In the result the following order is made:

1. The defendant is ordered to pay to the first plaintiff the sum of R242 261 as and for damages in her representative capacity.

2. The defendant is ordered to pay to the second plaintiff the amount of R60 441 as and for damages.

3. The defendant is ordered to pay interest on the aforesaid amounts calculated at the legal rate from a date fourteen (14) days after judgment to the date of payment.

4. The defendant is ordered to pay the plaintiffs' cost of suit, together with

interest on the plaintiffs' taxed costs calculated at the legal rate from a date fourteen (14) days after taxation to the date of payment.

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J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For Plaintiff: Adv C van Rooyen instructed by Rory Liesching Attorney, Port Elizabeth

For Defendant: Adv I Dala instructed by Boqwana Loon & Connellan