

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 020102/2022

DATE: 27-02-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED. ✓

DATE 27 FEBRUARY 2024

SIGNATURE

10 In the matter between

PHUNGWAYO ANNA BUYISILE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

P.A VAN NIEKERK, AJ: In the plaintiff's particulars of claim it is pleaded that plaintiff and one Mr Sebuluane ("the
20 deceased") are the natural parents of a minor child and that the deceased was in law, obliged to support plaintiff and the minor child.

It is further pleaded that the deceased was involved in a motor vehicle collision on 4 October 2021 at 14:20 at or near R23 Balfour Road near Heidelberg which was caused by the negligent driving of the "insured driver".

It must be mentioned that the pleadings in this regard are vague and no specific averments are pleaded in relation to the "insured driver".

At the commencement of the trial, plaintiff's legal representative, being the attorney acting for plaintiff since inception of the matter, confirmed that the matter will proceed in all issues being the merits of the claim and the quantum of the damages.

In the defendant's plea all averments relating to
10 merits and quantum are denied, including the averments relating to the *locus standi* of the plaintiff.

The practice note filed on 14 February 2024 also confirms that merits of the claim and the issue of the quantum of damages are to be adjudicated. The minutes of a pre-trial conference held between the respective legal representatives, also confirmed that all issues are in dispute.

After the commencement of the trial, plaintiff's legal representative called a witness who testified that he is the brother of the deceased who travelled in the same motor
20 vehicle of the deceased at the time of the accident.

Considering the order that I intend to make, I deem it to be improper to express any view on the evidence of the aforesaid witness and I make no factual finding on his evidence.

After the single witness referred to supra completed

his evidence plaintiff's legal representative closed the plaintiff's case. I questioned plaintiff's legal representative to reconsider this step and for such purposes adjourned the court. When I returned to court, I was again informed that plaintiff's case is closed.

During argument plaintiff's legal representative conceded that plaintiff failed to prove her *locus standi* to act on behalf of the minor child, failed to prove the alleged legal obligation of the deceased to support the plaintiff and the
10 minor child, and failed to prove any damages.

It is patently clear that the plaintiff failed to prove any of the required elements of delictual liability in order to establish any liability of the defendant following the alleged accident and the fact that the deceased passed away.

Consequently, this matter is the proverbial textbook example of a matter where absolution from the instance should be granted

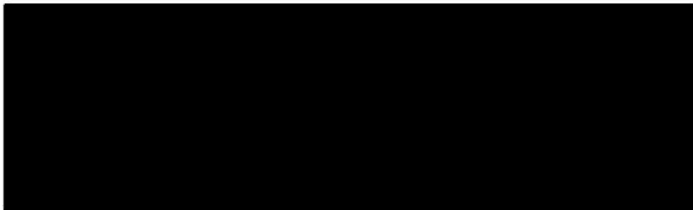
As far as costs are concerned, the failure to appreciate the necessity to lead material evidence, the
20 haphazard manner in which the matter was brought before Court and the inevitable result of an order for absolution from the instance, is not the fault of the plaintiff or the minor child on whose behalf the action was instituted but is solely the result of the negligence of the plaintiff's attorney of record.

I requested plaintiff's attorney of record, who was the plaintiff's legal representatives acting at the trial, to address me on reasons why an order for costs *de bonis propriis* should not be granted against him, and received no proper reason in response.

I therefore make the following order. Absolution from the instance is granted, that is the first order. The second order is plaintiff's attorney of record is ordered to pay the costs of the matter of the action *de bonis propriis*.

10

- - - - -



P.A VAN NIEKERK, AJ

JUDGE OF THE HIGH COURT

DATE: 05/03/2024

20

Appearances

For the Plaintiff:

Mr C S Mopedi
Instructed by C S Mopedi
Attorneys

For the Defendant:

Adv. T Tivana
Instructed by State Attorney

10

Heard: 27 February 2024

Delivered: 27 February 2024