REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 84816/2016

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED YES

25/06/2019 ....

DATE SIGNATURE

In the matter between:

N.E.SAJINI **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

COLLIS J:

INTRODUCTION

[1] The plaintiff is suing the defendant, for loss of maintenance and support arising from the death of Xolani Ngcefa (*the deceased*) in a motor vehicle collision on 26 May 2016. On the same day the deceased suffered injuries and ultimately succumbed to his injuries.

BACKGROUND

[2] At the commencement of the proceedings the parties informed the court that the dispute on the merits was resolved by way of a court order dated 30 May 2018. This court was therefore called upon to adjudicate the amount of loss of support suffered by the plaintiff as a result of the death of her late husband which would render the defendant liable in terms of section 17(1) of the Road Accident Fund Act 56 of 1996.

EVIDENCE

[3] Ms. Nthombizonke Sajini testified that at the time of the death of the deceased, Mr. Xolani Ngcefa she was married to the deceased in terms of Customory Law. From this union two children, now both majors, were born. Ms Sanjini testified that during the existence of their customary union, she never worked and was responsible for looking after the children and doing household chores. It was also her testimony that she has never received any death benefit from the employer of her late husband. She testified further that when life became tough to survive on the sole income of the breadwinner deceased, she engaged her late husband's previous employer requesting employment and was fortunate that they offered her employment. She took up this employment on 26 January 2017 and is still to date employed at the same company. Confirmation of such employment appears in Exhibit A page 55. She concluded her testimony by stating that she has not remarried and considers such a possibility as remote as she now even have grandchildren to look after.

[4] During cross-examination she testified that from her current income she supports herself, her two major children and her grandchildren as both her children are unemployed. During cross-examination she maintained that albeit that her husband at the time of his death was earning less than what she currently earns, life remains expensive to maintain herself with the result that she can ill afford to resign her job. This then concluded her testimony.

[5] No viva voce evidence was presented on behalf of the defendant and as such the evidence presented by the plaintiff remains uncontroverted. By agreement between the parties, the actuarial reports prepared by the respective actuaries was admitted into evidence and the correctness of such reports confirmed.

[6] At the conclusion of the proceedings on 28 February 2019, the matter was postponed *sine die* to enable the defendant to obtain a revised actuarial calculation and for the actuaries to file a joint minute. On 19 June 2019 counsel on either side informed to the court that the defendant's actuary will not be able to furnish this court with a revised actuarial calculation as such revised calculation is dependable on a further instruction to be obtained from the Road Accident Fund, which instruction has not been obtained. The court was further informed that by agreement between the parties, that the actuarial calculation which the court should premise its' decision on, should be the calculation determined by Professor H. Du Plessis, i.e. that the plaintiff was earning a zero income as at date of death of her late husband.

[7] This contention the parties had agreed upon as the defendant's actuary premised his decision on the assumption that the plaintiff was employed as at death of the deceased which was clearly wrong.

LEGAL PRINCIPLES

[8] A court retains a wide discretion in the assessment of damages based on loss of income and support which cannot in general be assessed with any degree of mathematical accuracy.[1]

[9] It is true that the court is obliged, as of duty, to assess damages and award compensation if it is certain that pecuniary damages have been suffered.[2]

[10] In a claim for loss of support the remedy relates to material loss and seeks to place dependants of the deceased breadwinner *"in as good a position, as regards maintenance, as they would have been in if the deceased had not been killed. To this end the material losses as well as benefits and prospects must be considered."*

[11] In the decision Lambrakis v Santam 2002 (3) SA 710 (A) para 12 the court found:

> *"The measure of damages for loss of support is usually the difference between the position of the dependant as a result of the loss of support and the position*

[1] AA Mutual Insurance Association Ltd v Maqula 1978 (1) SA 895 (A)
[2] Hersman v Shapiro and Company 1926 TPD 367 at 379

he or she could reasonably have expected to be had the deceased not died…."

APPLICATION OF LEGAL PRINCIPLES

[10] In the present instance Ms Sojini testified that at the time ofher late husband's death she was unemployed and as such not earning an income. At this point in time she was solely being maintained by her late husband and it follows that as a result of his death, she had been injured by this loss of support having fallen away.

[11] From the authorities it is clear she should be compensated for her loss and having regard to her actuarial calculation presented before this court, the amount to be awarded is R 224 747.00.

[12] The general principle with regards to costs is that the successful party is entitled to its costs in that same should follow the event unless there is good cause for holding otherwise. In the circumstances given the fact that the Plaintiff has been successful in discharging her onus to prove her loss of support claim, there exist no basis to deprive her of her costs incurred in presenting her claim.

ORDER

[13] Consequently, the following order is made:

13.1 The defendant is ordered to pay the plaintiff an amount of R 224 747.00 in respect of her loss of support. Payment to be made by means of electronic transfer of funds to the plaintiff's attorney of record.

13.2 The above mentioned amount is to be paid within 14 days of date hereof, failing which interest shall accrue thereon at a rate of 10, 25 % per annum.

13.3 The defendant shall further pay the plaintiff's costs on a High Court scale as between party and party, either as taxed or agreed including costs of the qualifying fees and reasonable and necessary fees and disbursements of expert witnesses, within the discretion of the Taxing Master.

COLLIS J

JUDGE OF THE HIGH COURT OF

SOUTH AFRICA

Appearances:

For the Plaintiff:	Adv. N. Potgieter
Attorney of the Plaintiff:	Cremer & Strydom Inc.
For the Defendant:	Adv. D.H. Maluleke
Attorney for the Defendant:	Matabane Inc
Date of Hearing:	28 February 2019 & 19 June 2019
Date of Judgement:	25 June 2019