



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

DELETE WHICHEVER IS NOT APPLICABLE		
(1)	REPORTABLE:	No
(2)	OF INTEREST TO OTHER JUDGES:	No
(3)	REVISED:	Yes
Date: 22 July 2019		
SIGNATURE:		

CASE NUMBER: 20711/2017

In the matter between:

JUANE GROBLER

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Coram: A Vorster AJ

Heard: 18 July 2019

Delivered: 22 July 2019

ORDER

1. Determination of the period of dependency of the plaintiff, to be used in assessing her claim for loss of support, is separated from determination of the other remaining issues in this matter.
2. This matter and the matters listed below are hereby consolidated under case number 20710/2017:

CASE NO: 20710/2017 RUAN BERG GROBLER V RAF

CASE NO: 20708/2017 CHRISTIAN BOSHOF GROBLER V RAF

CASE NO: 20709/2017 NICOLA GROBLER V RAF

3. Determination of the remainder of the issues in this matter is postponed to 16 October 2019.
4. The quantum of the plaintiff's claim for loss of support against the defendant must be assessed on the basis that the plaintiff would have been entitled to, and in fact been supported by her mother, until 31 December 2020.
5. The defendant shall pay the taxed or agreed costs of the action up to date hereof, including but not limited to:
 - 5.1. the costs attendant upon employment of Counsel, including the full day fee of Counsel for every day the matter appeared on the trial roll, including but not limited to 6 June 2019 and 17 July 2019;

- 5.2. the plaintiff's reasonable and taxable travelling costs for attending expert consultations, the costs of consultations in preparation for trial as allowed by the Taxing Master, and the trial on 6 June 2019 and 17 July 2019;
- 5.3. the costs of the report and the preparation, qualifying and day fees, if any, of Ms. N. Kotze.
6. Should the issue of costs not be settled, the plaintiff's attorney shall serve a notice of taxation on the defendant's attorney and allow the defendant 14 (fourteen) court days to make payment, where after interest shall be payable at the prescribed rate of 10.25% per annum, calculated 14 days from the stamped of the allocatur, to date of payment.

JUDGMENT

A Vorster AJ

- (1) I have been called upon to decide this matter on a very narrow basis. The plaintiff lost her mother as a result of motor vehicle collision on 30 March 2014. On a previous occasion the defendant conceded that it is liable to compensate the plaintiff for the loss of support she suffered as a result of the death of her mother. The issue placed before me at this stage pertains to the period of dependency of the plaintiff, to be used in the assessment of her claim for loss of support.

- (2) Only the plaintiff testified, and the evidence of the plaintiff was not disputed, or rebutted, on any credible grounds. The plaintiff testified that, had it not been for the death of her mother, she would have pursued and attained her honors degree in Visual Communication and Motion Design, in December 2019. Thereafter it would have taken her a year to find gainful employment and become self-supporting. Because of the death of her mother, and the resultant lack of financial support, she would now only attain her honors degree and become self-supporting in December 2022.
- (3) It is not controversial that the plaintiff's mother, who was employed at BHP Billiton, and earned in excess of R80'000.00 per month, both had the ability, and voluntarily assumed the obligation to support the plaintiff financially until she found gainful employment and become self-supporting.
- (4) Counsel for the defendant graciously, and in my view correctly, conceded that on the undisputed facts the plaintiff's mother would in all probability have continued to support her financially until she found gainful employment, after she finished her degree, in 2019. Based on the uncontested evidence, and the concession made, the date to be used as a premorbid scenario when support would have terminated is December 2020.
- (5) As to whether the plaintiff's mother had a duty to support her until this date I find that the voluntary assumption of the obligation by the plaintiff's mother to support her financially would have sufficed, even in the absence of a legally enforceable duty. I base my finding on the reasoning adopted by Sutherland J in the case of **JT v RAF 2015** (1) SA 609 (GJ) at page 613 and Grogan AJ's obiter dictum the case of **Jacobs v Road Accident Fund** 2010 (3) SA 263 (SE). Both Sutherland J and Grogan AJ seem to imply that a voluntary assumption of a duty to support grounds the existence of such right.

- (6) In the case of **Metiso v Padongeluksfonds** 2001 (3) SA 1142 (T) at 1150G-H, Bertelsmann J found that a binding offer to support children is sufficient to ground a duty of support, because to do so was consistent with the morality of society.
- (7) I am therefore satisfied that the plaintiff's mother's binding offer to support her grounded a duty of support, and a concomitant entitlement thereto. I need to reiterate that I was not called upon to determine the extent to which the plaintiff's mother would have supported her financially. The fact that the plaintiff was intermittently employed, or from time to time supported by her sister and partner, are irrelevant for purposes of this judgement. These facts may or may not be taken into account when the quantum of loss is determined, but has no bearing on the question as to the period of dependency of the plaintiff.
- (8) The question that remains is whether the plaintiff may claim the demonstrable loss she will continue to suffer until the end of 2022 under her claim for loss of support. I have dealt with the fact that the plaintiff would have become self-supporting at the end of 2020, but as a result of the death of her mother, and the resultant loss of support, she will now only become self-supporting towards the end of 2022.
- (9) Mr. Grobler for the plaintiff implored me to find that the plaintiff's loss of support claim should be extended to December 2022, when she would now become gainfully employed and self-supporting, because the loss she will continue to suffer is an incidence of the her claim for loss of support. I cannot agree with Mr. Grobler's contention because it conflates the nature and jurisdictional requirements of a claim for loss of support, with the nature and jurisdictional requirements of a claim for loss of income.

- (10) A loss of support claim was dealt with by Corbett JA in **Evins v Shield Insurance Co Ltd** 1980 (2) SA 814 (A) at 838H-839C & 837H-838B in these terms:

'... in the case of an action for damages for loss of support, the basic ingredients of the plaintiff's cause of action would be (a) a wrongful act by the defendant causing the death of the deceased, (b) concomitant culpa or (dolus) on the part of the defendant, (c) a legal right to be supported by the deceased, vested in the plaintiff prior to the death of the deceased, and (d) damnum, in the sense of a real deprivation of anticipated support. The facta probanda would relate to these matters and no cause of action would arise until they had all occurred.'

'... while the defendant incurs liability because he has acted wrongfully and negligently (or with dolus) towards the deceased and thereby caused the death of the deceased, the claimant (the dependant) derives his right of action not through the deceased or from his estate but from the facts that he has been injured by the death of the deceased and that the defendant is in law responsible therefor. Only a dependant to whom the deceased was under a legal duty to provide maintenance and support may sue and in such action the dependant must establish actual patrimonial loss, accrued and prospective, as a consequence of the death of the breadwinner. These principles are trite and require no citation of authority.'

- (11) In **Legal Insurance Company Ltd v Botes** 1963 (1) SA 608; [1963] 1 All SA 593 (A) the Appellate Division as it then was described the nature of the dependent's claim for loss of support in the following manner:

'At the outset it is necessary to deal with the nature and scope of the action, according to existing South African Law, by dependants against a person who has unlawfully killed the bread-winner who was legally liable to support them. The remedy was unknown to Roman Law, in which no action arose out of the death of a freeman, and consequently the Aquilian action was not available. It had its origin in Germanic custom, in which the reparation of "maaggeld" was regarded as a conciliation to obviate revenge by the kinsmen of the deceased, and it was divided among the latter's children or parents or other blood relatives. The Roman-Dutch Law modified the custom by regarding the payment as compensation to the dependants for loss of maintenance. The Roman-Dutch jurists felt that this could be accommodated within the extended framework of the Roman Aquilian action by means of a utilis actio. The remedy has continued its evolution in South Africa - particularly during the course of this century - through judicial pronouncements, including judgments of this Court, and it has kept abreast of the times in regard to such matters as benefits from insurance policies. The remedy relates to material loss "caused to the dependants of the deceased man by his death". It aims at placing them in as good a position, as regards maintenance, as they would have been in if the deceased had not been killed. To this end, material losses as well as benefits and prospects must be considered. The remedy has been described as anomalous, peculiar, and sui generis - but it is effective.'

- (12) On the plaintiff's own version her mother's support would have terminated towards the end of 2020. Therefore, based on the nature of a claim for loss of support, as described by Corbett JA in *Evins*, the deprivation of anticipated support would have terminated on this date. After this date the plaintiff would no longer have received financial support from her mother and a loss of support claim can therefore not be calculated beyond this date.

- (13) The real nature of the plaintiff's anticipated loss for the period 2020 to 2022 is in fact a loss of earnings, and not loss of support. Had it not been for the plaintiff's mother's death, she would have commenced gainful employment in 2020, whereas after her mother's death she will only commence with gainful employment in 2023.
- (14) The plaintiff's loss would therefore be the prospective earnings she stands to lose because she will commence with gainful employment three years later than she would have, had her mother not been killed in the motor vehicle collision. This is not a claim for loss of support. To allow the plaintiff to recover her prospective loss of income under a claim for loss of support will be to go beyond what the authorities have recognised in the past. It is my respectful view that the distinction drawn in **Evins v Shield Insurance Co Ltd** between a dependent's claim, and a damages action for bodily injuries, should also be drawn between a dependent's claim and a damages action for loss of income.
- (15) The plaintiff is not left without a remedy. She may still, if so advised, through an appropriate amendment include a claim for loss of income. I do not make any finding, or express any opinion, as to whether or not the plaintiff will in fact succeed with such a claim, or whether an amendment to include such a claim will in fact be allowed.
- (16) I have been advised that the plaintiff's siblings also instituted claims for loss of support in separate actions, and that these claims have been enrolled for hearing on 16 October 2019. I was therefore requested to postpone the remainder of the disputes to that date, to be heard simultaneously with the siblings' claims. The matters are all being dealt with by the same sets of attorneys.

(17) I indicated to the respective parties that I deem the separate prosecution of these matters unnecessary, especially from a cost perspective. I proposed that the matters be consolidated. The parties agreed to a consolidation and I propose to make such an order. After consolidation I will postpone the remainder of the disputes in this matter to 16 October 2019.

(18) Mr. Grobler argued that the plaintiff should be granted costs of suit to date on the normal High Court scale, and Mr. Maluleka merely argued that costs should follow suit. I see no reason why the plaintiff should not be awarded costs.

(19) For these reasons the following order is made:

(20.1) Determination of the period of dependency of the plaintiff, to be used in assessing her claim for loss of support, is separated from determination of the other remaining issues in this matter.

(20.2) This matter and the matters listed below are hereby consolidated under case number 20710/2017:

CASE NO: 20710/2017 RUAN BERG GROBLER V RAF

CASE NO: 20708/2017 CHRISTIAN BOSHOF GROBLER V RAF

CASE NO: 20709/2017 NICOLA GROBLER V RAF

- (20.3) Determination of the remainder of the issues in this matter is postponed to 16 October 2019.
- (20.4) The quantum of the plaintiff's claim for loss of support against the defendant must be assessed on the basis that the plaintiff would have been entitled to, and in fact been supported by her mother, until 31 December 2020.
- (20.5) The defendant shall pay the taxed or agreed costs of the action up to date hereof, including but not limited to:
- (20.5.1) the costs attendant upon employment of Counsel, including the full day fee of Counsel for every day the matter appeared on the trial roll, including but not limited to 6 June 2019 and 17 July 2019;
 - (20.5.2) the plaintiff's reasonable and taxable travelling costs for attending expert consultations, the costs of consultations in preparation for trial as allowed by the Taxing Master, and the trial on 6 June 2019 and 17 July 2019;
 - (20.5.3) the costs of the report and the preparation, qualifying and day fees, if any, of Ms. N. Kotze.
- (20.6) Should the issue of costs not be settled, the plaintiff's attorney shall serve a notice of taxation on the defendant's attorney and allow the defendant 14 (fourteen) court days to make payment, where after interest shall be payable at the prescribed rate of 10.25% per annum, calculated 14 days from the stamped of the allocatur, to date of payment.



A. VORSTER AJ

Acting Judge of the High Court

Date of hearing: 18 July 2019

Date of judgment: 22 July 2019

Counsel for the plaintiff: Ad. J. F. Grobler

Instructed by: Wehmeyers Attorneys

Counsel for the defendant: Adv. A. Maluleka

Instructed by: Iqbal Mahomed Attorneys