



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 2805/14

In the matter between:

JOSELINE HAMBERIETTA AMSTERDAM

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 21 NOVEMBER 2018

JUDGMENT BY: DANISO, AJ

DELIVERED ON: 06 DECEMBER 2018

- [1] The plaintiff claims damages for loss of support pursuant to the death of her husband ('the deceased') who died on 16 April 2012 as result of the injuries he sustained in a motor vehicle accident.

- [2] The following facts are common cause: The accident occurred on 09 March 2012 between the deceased's vehicle and the insured vehicle. The deceased was injured when the insured driver travelling on the opposite direction overtook another vehicle and collided into the deceased's vehicle. The deceased was hospitalized but succumbed to his injuries approximately a month later.
- [3] The defendant conceded the merits and agreed to pay 100% of the plaintiff's proven damages. In the interim, the defendant agreed to pay an amount of R520 274.00 which includes funeral costs pending the determination of the quantum in respect of loss of support and past medical expenses.
- [4] The plaintiff testified and also called Doctor Everd Jacobs, an Industrial Psychologist as a witness. The summary of the evidence tendered in that regard is the following:-
- 4.1. At the time of the accident the family was mainly dependent on the deceased's income. The plaintiff previously worked as an administrative clerk for about 25 years and also ran a catering business part time. She lost her job a month before the deceased passed away. She then continued with the catering business. The income she received from the business was sporadic she could not even afford to pay accountants to keep proper accounting records and tax reports, it ultimately folded.

- 4.2. The plaintiff and the deceased were married in community of property. They were blessed with four children.
- 4.3. All the children are adults and self-supporting except for Delarese Demi Amsterdam. She is 21 years old, however, she is still dependent on the plaintiff as she is studying. She was only 14 years old when the deceased passed away.
- 4.4. The deceased was a qualified carpenter. At the time of the accident he was employed as an artisan at **Sand Vet Water Users Association**. He earned about R455 432.00 per annum. He was a diligent and an excellent worker who aspired to progress to senior positions. Taking into consideration his qualifications, experience and work ethic, the deceased had great career prospects of progressing to management level. He would have worked till the retirement age of 65 years.
- 4.5. Pursuant to the accident, the deceased was hospitalized on the day of the accident until he passed on. The medical expenses incurred in that regard amounted to R648 280.10. He was 46 years old.

[5] That was in short the plaintiff's evidence, in addition to the viva voce evidence, documentary evidence was handed in by concurrence of both parties and marked as Exhibits; the actuarial report (**Exhibit "A8-13"**) the industrial psychologist's report

(*Exhibit “A21-38” &, “A74-85”*) and the hospital statement of account (*Exhibit “B”*).

- [6] The defendant closed its case without calling witnesses.
- [7] The plaintiff's evidence that personally and as the natural and legal guardian of Delarese, the child born to her and the deceased have suffered damages due to the loss of support occasioned to them by the death of the deceased and that they were entitled to damages was undisputed.
- [8] Counsel for the plaintiff argued that an amount of R2 692 800.00 must be paid to the plaintiff in her personal capacity, and R608 300.00 in respect of Delarese, being damages sustained in consequence of the death of the plaintiff's husband.
- [9] On the other side, the defendant merely accepted that the actuarial report can be relied upon for the determination of the quantum, no submissions were made to the contrary.
- [10] In the assessment of damages for loss of maintenance and support the court has a large discretion to award what it considers fair and equitable under the circumstances. The court may be guided but certainly not tied down by inexorable actuarial calculations. See *Legal Insurance Company Ltd v Botes* 1963 (1) SA 608 (A) page 608.

- [11] The duty is on the plaintiff to provide the court with sufficient information to enable it to make a just and equitable assessment of the damages she has sustained.
- [12] On the facts germane to this matter, except for the plaintiff's say so, there are no dependable financial statements or tax returns in respect of the plaintiff's erstwhile source of income. The plaintiff's earnings or capacity to earn is a factor to be taken into account in cases dealing with the loss of a bread-winner.
- [13] Having said that, the plaintiff's evidence that she is indigent and that at the time of the accident she was dependent on the deceased who duly supported her and would have continued to support her but for his demise is uncontroverted. I have found no reason to reject it.
- [14] The figures for loss of support in the actuarial report are based on the deceased's net annual income at the time of his death, the assumption that he would have continued working and earning relatively the said income for the next 19 years until he retired at the age of 65. The plaintiff and Delarese have been deprived of the support of about 19 years. The contingencies have been applied accordingly. I'm thus satisfied that actuarial evidence accords with what is fair and just in these circumstances.

[15] In the circumstances I consider that a fair and reasonable award to be paid as compensation to the plaintiff is an amount of R3 457 206.10. This figure incorporates;-

15.1. The past and future loss of support in respect of the plaintiff,
R2 692 800.00;

15.2. The past and future loss of support in respect of Delarese,
R608 300.00;

15.3. The past medical costs R648 280.10;

15.4. The funeral costs R28 100.00;

Less

15.5. The interim payment in the sum of R520 274.00.

ORDER

[16] The following order is made:

1. The defendant is ordered to pay the plaintiff the amount of R3 457 206.10 together with interest at the prevailing rate reckoned from a date 14 (fourteen) days after judgment to date of final payment.

2. The defendant shall pay plaintiff's costs of the action, including the qualifying and reservation fees and expenses incurred in obtaining all medico-legal-reports/joint minutes and actuarial reports.

NS DANISO, AJ

APPEARANCES:

Counsel on behalf of the plaintiff:

Adv. Nortier

Instructed by:

P Joubert INC.
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Counsel on behalf of the defendant:

Adv. Saunders

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