

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case number: 916/2014

In the matter between:-

KHOMOTSO POLLY MPHIRIME

Plaintiff

Identity Number: [.....]

and

ROAD ACCIDENT FUND

Defendant

CORAM: OPPERMAN, AJ

HEARD ON: 18 NOVEMBER 2015

DELIVERED ON: 25 FEBRUARY 2016

JUDGEMENT

Opperman, AJ

Introduction

- [1] The Plaintiff, a 36 year old housewife with three children, was involved in a motor vehicle accident on 12 June 2012 in Welkom. She was a passenger in the vehicle that collided with the insured vehicle. The negligence of the insured driver stands undisputed.
- [2] It is common cause that the accident has caused the Plaintiff serious permanent disfigurement which has affected her psychologically, physically and financially and will do so in the future. Pertinent to the issue in hand, and also trite, is that the Plaintiff is unable to perform her tasks as housewife. This has an adverse effect on her family and marriage.

The issue for adjudication

- [3] The matter was enrolled for hearing on the 17th and 18th of November 2015. On the 17th of November 2015 a settlement was made an order of this Court but:

“The claim for R231 474-00 for future loss of earnings, or costs to the employ of a domestic assistant, as well as the costs of experts on this matter, excluding costs of 17 November 2015 which is already agreed in paragraph 6, stand over for adjudication by Court on 18 November 2015.”

- [4] The Defendant did not dispute the need for a domestic assistant, nor the quantum of the amount claimed to employ an assistant.
- [5] The basic issue is whether the Plaintiff is entitled to be paid the cost of employing a domestic assistant to her as a patrimonial loss in a lump sum, or whether the Defendant should pay this expense in terms of a certificate under section 17(4)(a)¹ of the Road Accident Fund Act 56 of 1996. (The Act)²
- [6] The Defendant claims compliance with liability in terms of the Act to be in the form of an undertaking stipulated in section 17(4)(a)(i) and (ii); the Plaintiff claims payment of an amount of R231 474-00

¹ 17 (4) Where a claim for compensation under subsection (1)-

a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to compensate i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or ii) the provider of such service or treatment directly, notwithstanding section 19(c) or (d), in accordance with the tariff contemplated in subsection (4B); (Accentuation added)

² All sections referred to will be sections in the Act except if specifically stated otherwise.

in terms of section 17(1)(a)³ alternatively 17(4)(b)⁴ and not 17(4)(a) or 17(4)(c).⁵

- [7] The issue revolves around the interpretation of the services stated in section 17(4)(a) in correlation to the classification of the services of a domestic assistant in the applicable law: Whether the expenses for domestic services in definition resort under the obligations in terms of section 17(4)(a) or under general delictual costs as worded in section 17(1)?

The classification of the claim in issue

- [8] The undisputed nature of the claim by the Plaintiff is for a domestic assistant to exclusively do household chores. She does not claim for any health services or personal physical aid by the assistant. In **Erdmann v Santam Insurance Co Ltd** 1985 (3) SA 402 (C) the Plaintiff showed that she required help to run the

³ 17. Liability of Fund and agents

1) The Fund or an agent shall-

a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

⁴ 17(4)(b) includes a claim for future loss of income or support, the amount payable by the Fund or the agent shall be paid by way of a lump sum or in instalments as agreed upon.

⁵ 17(4)(c) Includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding-

i) R160 000 per year in the case of a claim for loss of income; and

ii) R160 000 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.

home. The loss of hiring a domestic assistant was classified as follows:

“The words ‘compensate for any loss or damage’ (referring to section 17(1)) have been accepted to be the restatement of the common law position as regards what an injured person is entitled to claim in delictual action. The measure of such damages is the difference between the value of the plaintiffs’ estate after the commission of the wrong and the value that it would have had if the wrong had not been committed. The injuries sustained by the plaintiff have impaired her capacity to run the home. There has been partial loss of her ability to perform housekeeping duties. An assistant can be hired to compensate for the plaintiffs’ impairment. The costs of an assistant can thus be used as a valuation of the loss.”

- [9] The wording of section 17(4) as it refers to section 17(4B)⁶ and as section 17(4B) refers to section 17(4)(a), explicitly denotes and states that the liability of the Fund or an agent shall be based on tariffs for health services provided by public health establishments contemplated in the National Health Act 61 of 2003, (NCA). No other service is indicated or defined; rendering of service can only mean health services. Section 17(4)(a) refers to ‘rendering of

⁶ 17(4B) (a) The liability of the Fund or an agent regarding any tariff contemplated in subsections (4)(a), (5) and (6) shall be based on the tariffs for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003), and shall be prescribed after consultation with the Minister of Health.

b) The tariff for emergency medical treatment provided by a health care provider contemplated in the National Health Act, 2003-

i) shall be negotiated between the Fund and such health care providers; and

ii) shall be reasonable taking into account factors such as the cost of such treatment and the ability of the Fund to pay.

c) In the absence of a tariff for emergency medical treatment the tariffs contemplated in paragraph (a) shall apply.

service' in a connected sentence structure to hospitals and nursing homes:

“...a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her...”

[10] ‘Health services’ in terms of section 1 of the NCA is defined as:

- a) Health care services, including reproductive health care and emergency medical treatment, contemplated in section 27 of the Constitution;
- b) Basic nutrition and basic health care services contemplated in section 28(1)(c) of the Constitution;
- c) Medical treatment contemplated in section 35(2)(e) of the Constitution, and
- d) Municipal services.”

[11] A ‘public health establishment’ in terms of section 1 of the NCA means a health establishment that is owned or controlled by an organ of state.

Conclusion

[12] Considering the above domestic assistance does not resort under the classification of health services. Case law corroborates the finding. In **Oberholzer v National Employers' General Insurance Company Limited** 1988 (4A3) QOD 1 (C) the court awarded an amount of R76 474- 00 for the cost of domestic help, in **Bennie v Guardian National Insurance Co Ltd** 1989 4 C&B

A3-34 (W) the court awarded R201 598-00 in regard to costs for a domestic assistant, in **POO v President Insurance Company Limited** 1992 (4A3) QOD 96 (T) the court awarded an amount of R85 730-00 in respect of the costs of a domestic assistant and in **Menzel v Allianz Insurance Limited** 1988 (4E6) QOD 1 (T) the court awarded, apart from general damages also the costs of obtaining a gardener, costs for painting the house and past costs for the servicing of the car.

- [13] It is as a result found that the Plaintiff made out a proper case that the claim is not for services or expenses stated in section 17(4)(a) but a loss in terms of section 17(1) to be paid in a lump sum.

ORDER

1. The Defendant is ordered to pay an amount of R231 474-00 to the Plaintiff for the costs of employing a domestic assistant.
2. Defendant must pay the costs for the day that includes the costs for experts on the matter of domestic assistance.

M. OPPERMAN, AJ

On behalf of the plaintiff: Adv. AP Berry
Instructed by:

McIntyre & Van Der Post
BLOEMFONTEIN

On behalf of the defendant: Adv. ML Gcasambe
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