IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**NO**
Of Interest to other Judges:	**NO**
Circulate to Magistrates:	**NO**

Case number: 317/2013

In the matter between:

SETELI ANNA MOKOENA Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT BY: MATHEBULA, AJ

HEARD ON: 21 SEPTEMBER 2016

DELIVERED ON: 10 NOVEMBER 2016

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[1] The plaintiff instituted an action against the defendant for loss of support for herself and her two minor daughters. The merits were settled and an order to that effect was made by Lekale J on the 29 July 2014. The only outstanding issue before me is the determination of the quantum.

[2] At the outset of the trial the parties agreed to the correctness of the Acturial Report compiled by an actuary namely Alex Munro. The report was handed in and marked Exhibit “A”.

[3] Two witnesses were called to testify for the plaintiff. The plaintiff testified that her deceased husband was a tuck-shop owner who conducted it from rented premises based at Mashaeng, Fouriesburg. She was also assisting him in selling cigarettes, hair products, airtime vouchers etc. The stock was sourced primarily from Ficksburg, Bethlehem and Qwa-Qwa. She was the author of the document detailing their daily takings. Although this document was properly kept on that aspect, it did not reflect the nett income of the business.

[4] Allan Soley took the stand and testified that he is a qualified and practicing Chartered Accountant for approximately 50 years. His clients consists mainly of small business owners. He compiled the income and expenditure statement handed in and accepted per agreement between the parties. This was marked exhibit “B”. According to him the average income of the deceased was approximately R16 000,00 per month. It is from these figures that Exhibit “A” was compiled by the Actuary.

[5] It was submitted on behalf of the plaintiff that the loss of support be calculated until the age of 21 for the minor children. Further that the costs be awarded for two days that the matter has been set down.

[6] The defendant through Miss Oliver agreed with the plaintiff on the issue of calculating the loss of support until age 21 for the minor children. As far as costs were concerned, it was her submission that I exercise my discretion on the matter.

[7] It is not in dispute that the deceased owed a duty of support to the plaintiff and had two minor daughters. It is a trite principle of law the plaintiff will be entitled to damages in so far as has been actual paternally loss as a result of the wrongdoing of the insured driver. See **Evens v Shield Insurance Company Ltd** 1980 (2) SA 814 (A) at 838. It is an undisputed fact that the deceased was gainfully employed during his lifetime. He had an identifiable earning capacity. It is trite law that when an expert is called in a matter he does so to be of assistance to the court.

[8] In order to measure such damages for loss of support one must take into account the difference between the current position of the plaintiff and the position that could have existed had the deceased not died in coming to the correct award. In coming to the correct award I must execise my discretion judicially and in the interest of justice. In this matter the report that has been compiled by the Actuary accepted as exhibit “A” was uncontested. As a result of the report both parties accepted that the calculations in that report are correct and that the difference will only be as to whether I accept that the deceased had all the duty of support to the minor children up to the ages of 18 or 21. It is not uncommon in these current days that the parents will owe a duty of support to their children beyond the age of majority which is 18 years. Taking into consideration that at 18 years a child will

in all probability completing Grade 12. Given the availability of education opportunities such a child will proceed to a will undertake post matric qualification studies. This will require another three years of learning and dependency on the parent to support such a child until completion of studies. In this regard, I am therefore persuaded that calculating the loss of support until age 21 will be appropriate in the circumstances.

[9] I am of the view that the costs shall follow the result as per the general rule governing the question of costs. Further, that this matter was set down to commence on the 20th September but could not because of *inter alia* the negotiations as well as the lack of instructions on the part of the defendant to the legal representatives. In that regard, the defendant should pay costs for both the 20th and 21st of September 2016.

[10] In the result, I make the following order:

1. The defendant must pay the plaintiff the sum of R2 052 700,00;
2. Interest at the rate of 10,50% a *temporae morae* in the event the amount of R2 052 700,00 is not paid within 14 days from the date of this judgment;
3. The defendant shall pay the plaintiff taxed or agreed costs for the 20th and 21st September 2016 which costs will include costs for preparation, qualifying fees and attendance of the following expert witnesses namely: Alex Munro and Allan Soley.

M. A. MATHABULA, AJ

On behalf of the plaintiff:	Adv. J Zietsman Instructed by: Honey Attorneys BLOEMFONTEIN
On behalf of the defendant:	Adv. I Olivier Instructed by: Maduba Attorneys BLOEMFONTEIN

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