IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: 6070/2013

In the matter between:

H[…] B[…] A[…] **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

JUDGMENT

Heard: 13th May 2015
Delivered: 26th May 2015

JEFFREY AJ:

[1] This a dependants' claim for loss of support. The plaintiff's late husband, Mr S[…] A[…] A[…], was a passenger in a motor vehicle when he died in a motor vehicle collision in Durban on 28 May 2010. As a result of the death of her husband, she

claims damages for loss of support against the defendant on behalf her three minor children, U[…] A[…], a girl born on […] 1999, J[…] A[…] and J[…] A[…], twin girls born on […] 2005; who during his lifetime were the deceased's dependants.

[2] I was informed by counsel at the commencement of the trial that it had been agreed that the defendant was liable to compensate plaintiff for such damages for loss of support in respect of the three minor children as she was able to prove. It had also been agreed that the only issue that I would be requested to determine was the *quantum* of damages which defendant is liable to pay to the plaintiff.

[3] As far as the issue of *quantum* was concerned it was further agreed that evidence would be led and then I would be requested to rule on certain disputed assumptions that would be submitted to the actuary for the calculation of damages to be made. I was informed that thereafter the Court would be approached by the parties' counsel for an order on *quantum*.

[4] The disputed assumptions to be determined and which the actuary is required to factor into his calculation are: (a) the actual gross earnings of the deceased at the time of his death, namely 28 May 2010; (b) whether or not the deceased would

have contributed to the support of the minor children until they reached the age of 18 years or the age of 21 years; (c) whether both parents would have employed their earnings equally towards the minor children; and (c) what contingencies should be applied.

[5] The undisputed assumptions were: (a) the children's dates of birth; (b) that the plaintiff earned a gross salary of R13 250.00 per month as at 28 May 2010 and that her gross salary in May 2015 was R19 000.00 per month; and (b) both the plaintiff's and her deceased husband's monthly incomes would have been subject to inflationary adjusted increases in their income.

[6] The plaintiff gave evidence. She gave made a very good impression as a witness. She gave her evidence without prevarication and in an open, straightforward manner. She was unshaken under the able cross-examination of Mr *Reddy*. I therefore am able to confidently rely on her evidence as being truthfully and honestly given.

[7] She testified that her late husband was in partnership with Mr Pranash Udit in a concern called S N Recovery Works that was engaged in the business of precious metal recovery. The nature business meant that most transactions were settled in

cash and, indeed, many of their household expenses and other outgoings were made in cash. She was shown the financial statements of the business and she unhesitatingly conceded that the drawings of her late husband reflected in these books of about R615 per month was incorrect because, although the amount that he actually brought home each month varied, he would have come home with about R10 000.00 in January 2010 and then about R20 000.00 per month for February, March and April 2010. Under cross examination she conceded that her late husband may have brought home about R12 000.00 during April 2010. Mr Udit confirmed in his evidence that he and the deceased took home approximately equal drawings from the business – this was about R8 000.00 to R10 000.00 initially when the business began in 2008, rising to about R10 000.00 to R15 000.00 per month in 2010. In 2010 he said he was drawing on average about R15 000.00 per month. Mr *Reddy* cross-examined Mr Udit thoroughly on the books of the concern which obviously did not reflect the correct position and other ancillary issues. But he was not shaken on what he and the deceased were actually drawing and in this regard he corroborated the plaintiff's evidence.

[8] In these circumstances the Court must make the best of the material that is placed before it. I am satisfied on the evidence

before me that the plaintiff's late husband probably had an average gross income of R15 000.00 per month as at 28 May 2010 and I find accordingly.

[9] The plaintiff also testified that her eldest child, U[…] A[...], is 14 years old now and she attends the A[…] P[…] Secondary School. She has done very well throughout her school career and in 2014 when she was in grade 7 she was the dux at S[…] Primary School. It is probable, in these circumstances that U[…] will proceed to tertiary education after she completes grade 12. The twins are also doing well at school. They are 9 years old at present and there is no reason, she testified, to believe that they will not follow in their elder sister's footsteps and will also proceed to tertiary education after grade 12. Finally she testified that both she and her late husband had intended that the children would receive tertiary education. In these circumstances it is probable that the deceased would have contributed to the support of the minor children until they reached the age of 21 years and I find accordingly.

[10] With regard to contingencies there is no evidence to suggest that the deceased would not have remained commercially active until he turned 65 years of age. Indeed, the plaintiff testified that her late husband was in good health prior to his

death. This was not challenged by Mr *Reddy*. In these circumstances, I am of the view that it would be fair to apply the usual contingencies of 5% in respect of past income and 10% in respect of future income. I find accordingly.

[11] Mr *Naidu* submitted that the usual ratio of 2 parts for each adult and 1 part for each child of the deceased's monthly income should be applied to arrive at the proportion of his income to be allocated to the support of the minor children. Mr *Reddy* properly conceded that this proportion should be applied.

[12] In the premises I give the following directions for the actuarial calculation of damages for loss of support.

1. The deceased is the late S[…] A[…] A[…] who was born on […] 1972 and who died on 28 May 2010.

2. The deceased was a partner of a firm known as S N Recovery Works and at the date of his death, 28 May 2010, he earned an average gross income of R15 000.00 per month of which a 1/7th proportion would have been allocated to the support of each of the minor children, U[…] A[…], a girl born on […] 1999, J[…] A[…] and J[…] A[…], twin girls born on […] 2005.

3. Past loss of earnings: It must be assumed that had the deceased not died he would have earned an amount of R15 000.00 per month from 1 June 2010 to date of judgment with an annual percentage increase equivalent to the rate of inflation; from which past loss must be deducted contingencies of 5%.

4. Furfure loss of earnings: It must be assumed that these must be calculated from date of judgment, annual inflationary increases being applicable, to date of the deceased's notional retirement at age 65 years had he not died, from which must be deducted contingencies of 10%.

5. All other actuarial considerations normally taken into account in actuarial calculations of this nature are to be taken into account.

[13] I grant the following order:

1. The action is adjourned *sine die*.

2. The parties are given leave to approach the Court for further directions for the actuarial calculation of damages

for loss of support should these be deemed necessary by the actuary concerned.

3. In the absence of any further directions being required by the actuary concerned, the parties are given leave to approach the Court for a consent order.

4. The costs to date are reserved.

JEFFREY AJ

Appearances:

Counsel for the plaintiff	:	Mr R Naidu
Plaintiff's attorneys	:	Marlan Naidoo & Partners Ref. TP/HC/3438 Tel. 031 404 0234
Counsel for the defendant	:	Mr R Reddy
Defendant's attorneys	:	Hajra Patel Inc. Ref. S Sarjoo kg/03R425H348 Tel. 031 360 2262
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