

IN THE KWAZULU-NATAL HIGH COURT, DURBAN
REPUBLIC OF SOUTH AFRICA

CASE NO : 7397/2001

In the matter between:

AVRILL ELIZABETH WALTERS

Plaintiff

and

THE MINISTER OF SAFETY & SECURITY

Defendant

J U D G M E N T

K PILLAY J

[1] The Plaintiff, Avrill Elizabeth Walters, an adult female accountant, instituted action against the Defendant, the Minister of Safety & Security for damages arising out of the death of her husband, Michael John Walters (the deceased) who was arrested and detained for drunkenness. The deceased committed suicide whilst in police custody.

[2] The action was defended by the Defendant.

[3] Judgment was given in favour of the Plaintiff as follows:

“Defendant is held liable for such damages as the Plaintiff

may prove or is agreed upon, together with costs.”

[4] The parties could not reach agreement on the quantum of the Plaintiff's damages. This necessitated the Plaintiff having to adduce evidence to prove her claim.

[5] The Plaintiff's Particulars of Claim in relation to quantum was amended on numerous occasions without any objection from the Defendant.

[6] The final claim is as follows:

(a)	Loss of support	R1 980 159.40
(b)	General Damages	R 200 000.00
(c)	Funeral costs	R 5 001.67
(d)	Future medical expenses	R 120 349.00

[7] In paragraph 13 of the Particulars of Claim the Plaintiff alleged that as a result of the deceased's death, she suffered shock, anxiety, emotional and psychological suffering and feelings of guilt.

[8] However, this paragraph was subsequently deleted on amendment and replaced with one where the nature of the sequelae she suffered was more particularised, as follows:

“As a result of the foregoing the Plaintiff has suffered

(a) Mood disorder (depression);

- (b) *Post traumatic stress disorder;*
- (c) *Feelings of hopelessness;*
- (d) *Phobic response behaviour to members of the South African Police Services;*
- (e) *Occupational problems;*
- (f) *Self image and body image disturbances;*
- (g) *Neuro Psychological deficits of functionary aetiology;*
- (h) *The need for ongoing psychological treatment.”*

[9] It became clear that Plaintiff had now widened the ambit of her claim to include a claim for loss of income/earning capacity. After I queried exactly what her claim was, the Plaintiff elected to proceed with her claim for loss of support only.

[10] As a result thereof, the parties agreed that an updated loss of support report be compiled by the actuary, Gerard Jacobson. The said report was handed into Court by consent on 2 April 2012. There was no dispute about the actuary's calculation. In arriving at a final figure of R562 415 the actuary applied a 5% contingency in respect of accrued loss and a 12.5% contingency in respect of prospective loss. He also set out his reasons for justifying such contingency deductions. I am of the view that the aforesaid contingencies are fair. The Defendant has not challenged the actuary's calculations.

[11] In support of her claim, the Plaintiff testified and adduced the evidence of Dr Schlebusch, Miss Sonia Hill and Mrs Foresfield.

[12] The Plaintiff testified that she matriculated in 1976. She met the deceased when she was 16 years old. They attended the

same school. The deceased was a first year apprentice as a fitter and turner at the time.

[13] She began living together with the deceased from the age of 19 years. They had a son in 1978. She described herself as a straight A student who was not sporty. She and the deceased married in 1989. They moved down from Benoni to Durban and settled in Bluff. The deceased secured a job with the Frame Group of Companies.

[14] They were happy with the normal ups and downs associated with marriage, until their son left home. The deceased started drinking more heavily and had mood swings. He would not return home and sometimes sleep for days. This worsened to emotional abuse and destructive behaviour like smashing glasses and his hands against objects.

[15] This did not cause her to lose her love and affection for him. Instead she spoke to him about his behaviour and he then sought psychiatric help and was diagnosed as being bipolar.

[16] She did not know how to deal with his emotional outbursts and destructive behaviour. On the advice of a social worker, she obtained a family violence interdict and had him locked up on one occasion. She regretted doing this as he had to be kept from Friday to Monday until he saw a Magistrate.

[17] On the second occasion when he displayed the same behaviour, she called the police but specifically told them not to

arrest him on the interdict but to keep him locked until he sobered up. This was agreed to by the police who now had come to know the deceased.

[18] The following morning she was informed of the death of the deceased in custody. She was shocked and needed tranquilisers.

[19] After matriculating she worked as an invoice clerk for Indo Atlantic Airfreight and worked herself up to Accountant Manager with a staff of 20 to 30 under her management. After the company was liquidated she secured a job as a credit controller then to bad debt recoveries risk department and then to financial controller.

[20] She eventually moved to Investec Bank as accounts administration controller. Over the years she managed to qualify for performance bonuses. She enjoyed good health until she suffered two mini strokes after her hysterectomy. She was 38 years old at the time. There was a time that she continuously had glandular fever. She was put off work for three months, and slept for those three months.

[21] On her return to work she had to move to a less stressful department, viz the documentation department. She worked well in this department. Her health also improved.

[22] Apart from this medical ailment, she suffered mild depression for which she sought psychiatric help and was put on mild anti depressants for six weeks. This was before her husband's

demise.

[23] Her son emigrated. Her father died during one of her visits to her son. She had looked after him after he had had brain surgery. She took his death badly as they were extremely close. Her husband died nine months later.

[24] During cross-examination she stated that there was a bond of R80 000.00 outstanding on the home in Bluff she had shared with the deceased. She borrowed against the bond to survive as her severance package from Investec Bank was not enough for her to live on. The property is now valued at R75 000.00.

[25] At some point her brother lived with her. In terms of the deceased's will, she has her ½ share plus a usufruct on their home until her death, whereafter her husband's share devolves upon his son. Her brother who is younger than her is an alcoholic.

[26] She has been seeking work but has not had any response. It emerged that she had pharyngitis on an ongoing basis. She also dislocated her vertebra for which she requires physiotherapy. She conceded that she has various medical ailments throughout her life time.

[27] The deceased's drinking commenced after her son left home. She got an interdict to try and help the deceased and on advice of a social worker. His drinking made her anxious. After her husband's death, she did get support from a close friend. She had to wait for her son to return from the United Kingdom and for

an autopsy to be performed before funeral arrangements could be made. In the meantime, she returned to work.

[28] She conceded that it was unlikely that persons in her position at Investec would rise to higher echelons. She was assessed for performance before 2000. This continued into 2001, 2002 and 2003 up until 2006. Her last assessment was in 2006. These were written assessments. In 2000, it was established that no formal appraisal was in fact done. At beginning of March 2001 she assumed the position of Investment Accountant. She set herself deadlines and met all of those.

[29] For the 2001/2002 year , she received a bonus of R18 000.00. In fact she stated that as far as she could recall, she received a bonus every year. In the years 2004 and 2005, she believed she received R8 000.00 as a bonus. It was less than normal as her work had deteriorated. In 2006, her bonus had dropped to R5 000.00.

[30] In 2007, she took three months off, due to episodes of depression. At the time she had not been having any conflicts with co-employees. She received multi purpose treatment at Westville Hospital, administered through her psychiatrist Dr Pillay who collaborated with her GP Dr Eric Meltzer.

[31] She admitted that her brother's drinking also contributed to her stress but not significantly. She could not say what triggered her depression. Investec paid her R5000.00 towards her funeral expenses. She agreed to part ways with Investec Bank. She was

paid out R510 000.00 which she had to reinvest because of tax implications. Her post traumatic stress order began in 2003.

[32] Two experts testified and reports handed in with regard to the effect the deceased's death in custody, and the manner thereof has had on the Plaintiff.

[33] More particularly, Professor Laurens Schlebusch testified that he is a Professor, employed as the Head of Department of Behavioural Medicine at the Nelson Mandela School of Medicine at UKZN. His expertise is not in issue. He consulted with the Plaintiff on 3 June 2004 and on 29 June 2004.

[34] The purpose of his assessment was to determine the psychological effects on the Plaintiff of the arrest and death of her husband, who had committed suicide in custody on 15 July 2001. He conducted a battery of tests. He found, *inter alia*, that she was psychologically distressed; that she felt guilt and was overcome by the sudden and traumatic nature of his unexpected death.

[35] He found that she was a high achiever, who had acquired four credits towards her banking qualification. After the death of her husband, she was unable to complete the course, as she could not focus or study due to depression.

[36] He found that before her husband's death, she was a fairly well adjusted person with lost of friends, and interesting hobbies, like antiques collection, glass work, fabric painting and spiritual and natural healing. All these hobbies came to a halt after the

death of her husband, as she started feeling socially embarrassed because of the guilt she bore.

[37] She developed a phobia for policemen and people in uniform. She goes into a state of panic when she hears a siren and every time she sees a policeman she expects them to be bearers of bad news.

[38] Although she was suicidal, she would not act on it. She had sleep disturbances, loss of energy and drive, poor concentration and poor work motivation. He found her to be significantly depressed, physically and psychologically. He found that she was not malingering. She also had constant flashbacks. Cross-examined, it was elicited that despite subsequent treatment, the Plaintiff had not improved but in fact deteriorated.

[39] In light of the fact that the Plaintiff elected to forego her claim for loss of income/earning capacity, it is not necessary to set out the evidence of Sonia Hill, an Industrial Psychologist who was required to furnish an opinion on the Plaintiff's vocational potential and to determine potential loss of future income. Miss Foresfield related to Plaintiff's work ethic. It is on record.

[40] It is well established that the Court has a wide discretion in making an appropriate award for general damages. Although comparisons of awards in other cases may offer a useful guide, such comparisons are not decisive. The following dicta in *Protea Assurance Company Limited v Lam* is instructive¹:

¹ 1971(1) SA 530 (A) at 535 H-536 A

“It should be emphasised, however, that the process of comparison does not take the form of meticulous examination of awards made in other cases in order to fix the amount of compensation. Nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court’s general discretion in such matter.”

[41] I am satisfied, on the evidence, presented that the psychological sequelae suffered by the Plaintiff was extensive. In my view this was a direct consequence of the manner of the death of her husband in the Defendant’s custody. I therefore consider that an award of R185 000.00 is a fair and reasonable award for general damages.

[42] I accordingly grant judgment in favour of the Plaintiff as follows:

- (1) That the Defendant is to pay the Plaintiff the sum of R747 415,00 being R562 415.00 for loss of support and R185 000.00 for general damages. (This amount was arrived at after the contingency deductions as aforesaid)
- (2) That the aforesaid capital sum is to be paid to the Plaintiff’s attorney of record on or before 30th April 2012.
- (3) That the Defendant is to pay the Plaintiff’s costs of suit, as taxed or agreed to date of Judgment with such costs to be included inter alia the following:

3.1 the qualifying fees, costs of medico-legal reports and costs of consultation of the following expert witnesses with Plaintiff's legal representatives including Counsel:

3.1.1 Professor L Schlebusch-Clinical Psychologist;

3.1.2 Sonia Hill-Industrial Psychologist;

3.1.3 Gerard Jacobson – Actuary;

3.2 The appearance fees of Professor Schlebusch and Sonia Hill not subject to the limitation provided for in Government Gazette No R394 dated the 11 April 2008.

3.3 The Actuarial Reports of G Jacobson.

3.4 The additional/supplementary expert reports of Professor Schlebusch.

That in the event that the costs as aforesaid are not agreed the Plaintiff shall:

4.1 Give Defendant's attorney of record notice of the intended taxation of costs; and

4.2 Afford the Defendant 21 (twenty one) court days to make payment of the costs as taxed.

K PILLAY J

Date of Judgment : 12 April 2012

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