

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : 6620/08

In the appeal between:-

NOZINYANA SARAH MABASO

Appellant

and

ROAD ACCIDENT FUND

Respondent

HEARD ON: 25 MAY 2011

DELIVERED ON: 02 JUNE 2011

MOLOI, J

[1] This is a claim for compensation by the plaintiff for loss of support arising out of a motor accident in which the plaintiff's brother was killed. The merits have been conceded and this court is called upon to determine the quantum of the compensation. In addition the plaintiff claims an amount of R12 000.00 as costs of the funeral.

[2] The plaintiff, a 52 year old woman was a sister of the deceased, Lanka Samuel Mabaso, who was killed in a motor accident on 22 Oktober 2007. The deceased was unmarried and had no children.

The plaintiff stayed at her parental home at Koppies together with the deceased, her younger sister, Mirriam, and three children of her deceased sister, Elizabeth. In respect of the children she was receiving a foster grant of R2 180.00. She was doing washing and ironing for people in her township and had an income of approximately R600.00 per month. Her deceased brother was employed as a debt collector by Eland Furnishers at Sasolburg and earned an amount of approximately R3 000.00 per month. Her deceased brother gave her an amount of R1 500.00 every month as support. She cared for all the people living with her though her younger sister, Mirriam, was living with her boyfriend.

- [3] When her brother died, she did not receive any monies from his employer and he had no policies, nor funeral scheme. Some family members contributed an amount of R8 000.00 towards the burial costs and an amount of R4 000.00 is still owing to one Pitso, the owner of a funeral parlour that conducted the funeral. As recent as March 2011, she undertook to pay Mr Pitso the outstanding amount but had to date not paid any thing as she has no money. Herself used R300.00 to buy food for the funeral. She, however, did not have the invoices for the funeral expenses and she could not call Mr Pitso as a witness as he was sick.

- [4] Her further evidence was that since the death of her brother, she did not have enough income to cover her needs and did not receive old age pension. She could not get full-time employment. She was hopeful that when the foster children grew up, they would help her. She needed the R1 500.00 to augment her income as food is getting more and more expensive. Since the death of her brother it has become difficult to survive. She had passed Std 6 at school and had no other skills that would enable her to earn a better income. She had no other source of income.
- [5] From the arguments advanced before me, it appeared the parties agreed that there was indeed a duty of support on the deceased. Mr Coetzer, for the defendant, submitted that the duty on the deceased to support the plaintiff was restricted and could only arise if there was evidence that the plaintiff was indigent, that she was not in the position to support herself and that the deceased was in the position to support her: **SMITH v MUTUAL & FEDERAL INSURANCE CO. LTD** 1998(4) SA 626(C) at 632 D-E. He strongly argued that if anything the evidence showed that the plaintiff was poor but certainly not indigent. He submitted there was a difference between the two concepts. Clearly his argument

was influenced by the statement of **Gihwala A J** in the **SMITH** case *supra* at 632 D where he said "To be indigent means to be in extreme need or want whereas to be poor means having few things or nothing".

That statement defies the English language which defines indigent' as:

- "(a) Lacking in what is necessary, falling short of proper standard, deficient;
- (b) destitute of, void of;
- (c) in need of, requiring the aid of;
- (d) Lacking the necessities of life, characterised by poverty, poor, needy
- An indigent or poor person"

See **THE NEW SHORTER OXFORD ENGLISH DICTIONARY** Vol. 1 (A-M) Clarendon Press, Oxford, 1993 ed.

[6] Mr Coetzer further submitted that since the plaintiff's income, the contribution made by the deceased and the foster grant were pooled together for the common use for all five occupants of the house, if anything at all, the deceased alleged contribution stood to be divided by 5(five) in order to calculate the amount due to the plaintiff. Ms Wright, for the plaintiff, correctly pointed out that the basis of the claim is patrimonial loss the plaintiff had suffered as a

result of a delict and a party was entitled to that which she has proven as her loss. There being no evidence to gainsay the plaintiff's evidence as to the amount given to her as maintenance by the deceased, it would be improper to allocate that amount proportionately especially as the three children had no claim for maintenance against the deceased.

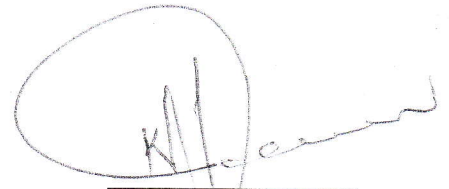
- [7] The plaintiff is 52 years old. She schooled up to Standard 6 and has no other qualification. She could not find a permanent employment and got a total amount of R600.00 per month from doing washing and ironing for her neighbours. The deceased used to assist her with R1 500.00 per month. For the deceased to do so, he must have realised that there was no way that the plaintiff could pull through with the amount she earned. The only other amount the plaintiff received was the foster care grant which is equally insufficient for a household the size we are dealing with. The plaintiff testified that survival was difficult since the death of the deceased. All the above, let alone the municipal rates and taxes, water and electricity etc. are more than enough indicators that the plaintiff is, indeed, indigent and in need.

[8] The other claim of the plaintiff consist of funeral expenses in the amount of R12 000.00. Of this amount, the other family members already contributed R8 000.00. The only amount still outstanding is the R4 000.00 owing to Mr Pitso. The plaintiff has recently i.e in March 2011 undertaken in writing to pay the amount to Mr Pitso. The argument that Mr Pitso's claim against the plaintiff had prescribed and that she did not need to pay it does not hold water in the light of her undertaking in writing as recently as March 2011 and the fact that it cannot off-set the defendant's liability to the plaintiff, the claim having been lodged way back in 2008 and the defendant having chosen to refuse to pay. The plaintiff also paid and amount of R300.00 towards the food needed for the funeral. This amount was not questioned.

[9] The calculation of the past and future loss of support suffered by the plaintiff was done by an actuary who submitted a report admitted in evidence as Exhibit A. The report was so admitted in evidence by agreement and no aspect of it was put in issue nor disputed. The calculations above indicate that the necessary contingencies were taken into account at acceptable levels.

[10] As a consequence the following orders are made:

- 10.1 The defendant is ordered to pay to the plaintiff as loss of maintenance and amount of R257 392.00;
- 10.2 The defendant is ordered to pay to the plaintiff as funeral costs an amount of R4 300.00;
- 10.3 The defendant is ordered to pay the costs.



K.J. MOLOI, J

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