

LVS
IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA
(NOORD GAUTENG HOË HOF, PRETORIA)

DATE: 2 NOVEMBER 2009

CASE NO: 7660/2005

UNREPORTABLE

In the matter between:

CHRISTINA ELIZABETH LOURENS

PLAINTIFF

VS

DIE PADONGELUKKEFONDS

DEFENDANT

JUDGMENT

BOTHA J:

This case arises from an incident that occurred on 12 April 2001 at Botha Avenue, Centurion. The plaintiff's husband (the deceased) was run down by a taxi whilst he was doing point duty as a temporary traffic officer. The plaintiff who was doing point duty at the next intersection, witnessed the incident. The deceased eventually succumbed to his injuries on 1 December 2002.

The plaintiff claims damages for loss of support for herself.

The issue of liability was adjudicated first and separately. On 29 November 2006 the court found that the defendant, the Road Accident Fund, was liable for all the plaintiff's proven damages.

In another action the plaintiff obtained damages for loss of support on behalf of her three minor children.

This case was disposed of without oral evidence. The parties were in agreement that I could refer to the expert reports of:

- (a) Dr Walters, an industrial psychologist;
- (b) Mr J Shoeman
- (c) Mr Jacobson, an actuary and
- (d) Mr Schwab an actuary and
- (e) A joint report by Dr Watters and Mr A Lampbrecht.

They were also in agreement about the amount of R50 000.00 claimed as general damages and the fact that an undertaking in terms of Section 17(4) of Act 56 of 1996 should be furnished in respect of future treatment for the emotional trauma suffered by the plaintiff as a result of her having witnessed the collision and having to live with its seq_____ for another 17 months.

The difference between die parties lies in the actuarial reports.

In Mr Jacobson's report two scenarios are used for the basis of calculations. The one was that the deceased would have continued with his calling as a pastor. The other was that he would have reverted to his previous occupation as an instrument technician.

I accept the first scenario as the more likely. The deceased's career change was decisive and made and made at great sacrifice. It was based on a deeply held faith. In the short time that he had the privilege to fulfil his calling he was by all accounts successful. The chances are that if he had been spared he would have continued his career as a pastor.

In this scenario the plaintiff accepted that the children would have remained dependant until the age of 21. That somewhat diminishes her claim.

The two most important differences between the reports of Mr Jacobson and Mr Schwab is that Mr Jacobson worked with a net discount rate differential of 3% and a re-marriage contingency of 20% whereas Mr Schwall worked with 2.5% and 31% respectively.

Mr Schwab said that 31% was half the average rate for a 40 year old white female. That cannot be correct because the re-marriage prospect for a 40 year old white female is 31%. See Koch: The _____ Yearbook 2009 p 98. In my view Mr Jacobson's assessment of the prospects of re-marriage is more accurate. The plaintiff was in court. She was married for 15 years. The

incident and its protracted sc_____ have left her emotionally shattered. Seven years have passed since the death of the deceased.

It is not possible for me, merely on the reports, meaningfully to declare a preference for any particular net discount rate.

In the end I am of the view that the fairest option would be to make an award in respect of loss of earning in between the values given by Mr Jacobson and Mr Schwab.

On Mr Jacobson's report the plaintiff's total net loss of income, past and future, would be R1 731 543.00. On Mr Schwab's report it would have been R1 275 475.00. If the difference is split it leads to a figure of R1 503 509.00 which I will round off to R1.5 million. To that must be added the amount of R50 000.00 for general damages, about which there was no dispute.

Mr Ströh, SC, who appeared for the plaintiff, provided me with a draft order which I shall mark "X" and which I shall make an order of court after having inserted the amount of R1 550 000.00.

In the result an order is made in terms of the draft marked "X".

C. BOTHA

JUDGE OF THE HIGH COURT