

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 16407/2019

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED

DATE: **8 July 2024**

SIGNATURE:

In the matter between:

M[...] W[...] B[...] obo

PLAINTIFF

M[...] B[...] AND S[...] B[...]

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR (AJ)

INTRODUCTION

1. This is an action for loss of support arising from a motor vehicle collision which occurred on 02 October 2015 at Maryvale road and Louis Botha avenue, Johannesburg between motor vehicle with registration numbers Y[...] 4[...] G[...] there an then driven by certain Nibiratjie (insured driver) collide with Eunice Patrick the deceased was a

pedestrian.

2. The Plaintiff lodged a claim in terms of the Road Accident Fund Act 6 of 1996 (“the RAF Act”) in personal as the deceased’s married partner **[1]** as well as in his representative capacity, as the biological father and natural guardian of their minor children M[...] B[...] (date of birth 23 March 2006) and S[...] B[...] (date of birth 23 January 2009) hereinafter referred to as “the minor children”. **[2]**

3. The Defendant is the statutory body established in terms of section 2 of the RAF Act to administer the compensation fund. The Defendant defence has been struck out before the Honourable Judge Noko (AJ) on 22 day of February 2023.**[3]**

4. The issues to be determined are the liability of the Fund and, if the Fund is liable, the amount of compensation for loss of support.

5. The Plaintiff bears the onus to prove both liability and the quantum of the claim. To establish liability, the evidence must demonstrate:

a. The Plaintiff and the minor children had a legally enforceable right to claim financial support from the deceased **[4]** and

b. Negligence or a wrongful act on the part of the insured driver that caused or contributed to the collision which resulted in the the death of the deceased.**[5]**

6. To established quantum, the evidence must demonstrate that plaintiff and the minor children suffered actual financial loss in consequence of the death of the deceased.

7. A duty to support minor children arises out of Section 28 of the Constitution, 1996 and the Children’s Act 38 of 2005 (the Children’s Act)**[6]**

8. Accordingly, I am of the view that a legally enforceable right to claim loss of support has been established or both the plaintiff and the minor children.

LIABILITY: NEGLIGENCE OR WRONGFUL ACT

9. Statutory liability in terms of section 17(1) of the RAF Act only arises where the deceased was not the sole cause of the accident or the collision. To discharge this onus, the Plaintiff must show that the insured driver's negligent or wrongful driving caused or contributed to the collision. The evidence must demonstrate that the insured driver was at least 1% negligent.[7]

10. According to the Collision Report description, Insured Driver confirmed that the pedestrian came crossing the Louis Botha ave from west to east. Suddenly he fell on the body of the car.

11. The probabilities are substantially in the Plaintiff's favor that the motor vehicle collision resulting in the death of the deceased was caused by or arose as a result of the insured driver's negligence or wrongful driving of the motor vehicle.

12. An offer from the RAFF was made to the Plaintiff in terms of Funeral expenses for the amount of R8551,07, where the Defendant conceded the merits (100% in favor of the Claimant)[8]

QUANTUM

13. To establish quantum, the plaintiff bears the onus to demonstrate actual financial loss[9]

14. Koch Consulting Actuaries expert reports is based on the following information:

- a. The deceased was born on 17 August 1974
- b. The deceased was a foreigner and was employed at Swartz Enterprise
- c. The deceased was the sole breadwinner earning R78 000 per year

d. Income of Plaintiff (husband) (foreigner) earned R48 000 per year

e. Total combined income of both parents apportioned two parts to each parent. One part to each child.

15. The Plaintiff submitted that loss of support for the minor child should be based on the assumption of dependency until the age of 21 years.

16. The Plaintiff submitted that a contingency deduction of 5% for the past lost and 10% for the future loss of support was appropriate.

17. Koch Actuaries report dated 11 June 202 after the application of the contingencies produced the amount of R696 703,10

18. In the judgment of Adam Mudawo

First Applicant

Wenile Simon Ndlovu

Second Applicant

Bruce Mthokozi Sibanda

Third Applicant

Oyetunde Oneriyi Areo

Third Applicant

and

Minister of Transport

First Respondent

The Road Accident Fund

Second Respondent

In the above mentioned case the policy decision by a Minister effectively resulting in an amendment of as Statuary provision - beyond the powers of a Minister to do so- the use off the words “any person” in Section 17 of the RAF Act 56 of 1996 (the Act) does not exclude illegal foreigners - neither the publication of an amended RAF 1 form not the circulation of a Management Directive by the RAF may

preclude illegal foreigners from claiming compensation under the Act nor prevent such persons from lodging claims.

ORDER

19. In the result I make the following order:

19.1 The Defendant is ordered to pay the Plaintiff total amount of R696 703,10 in full and final settlement in respect of Loss of support.

19.2 M[...] B[...] in respect of the minor claim an amount of R216 919,05 for loss of support

19.3 S[...] B[...] in respect of the minor child an amount of R253 268,45 for loss of support

19.4 Widower an amount of R226 515,60 in respect of loss of support.

19.5 The Defendant is to pay the Plaintiff's attorney's taxed or agreed party and party costs, on a High Court scale including the trial and until the date of this order which shall include the reasonable fees of Koch Actuaries and Counsel.

19.6 ***The effect of his order is hereby suspended pending the final outcome of the Appeal in Case no 011795/2022***

PIENAAR M (AJ)

ACTING JUDGE OF THE HIGH COURT GAUTENG DIVISION

Date of hearing : 12 April 2024 Date
of Judgment: 9 July 2024

Appearances:

For the Plaintiff : Adv Thandiwe Ndaba
Instructed by : David Maripane Attorneys
email: david@maripane.co.za
For the Defendant : Road Accident Fund
No appearance Link
no: 3868640

1. Caselines 10.4 Annexures to the application for default judgment, item 1 Marriage Certificate
2. Caselines 10.4 Annexures to the application for default judgment, item 2 Birth Certificate's
3. Caselines 10.4 Annexures to the application for default judgment, item 2 Court Order - strike out
4. MacDonald and Others v Road Accident Fund [2012] JOL 29313 (SCA) at par 14 citing with approval Evans v Shield Insurance Co Ltd 1980 2 SA 814 at 839 B Corbett JA:..."the basic ingredients of the plaintiff's cause of action would be (a) a wrongful act by the defendant causing the death of the deceased. (b) concomitant culpability (or dolus) on the part of the defendant. (c) a legal right to be supported by the deceased, vested in the plaintiff prior to the death of the deceased, and (d) damnum, in the sense of a real deprivation of anticipated support.
5. Voet 9.2.11 Grotius 3.32.2 MacDonald and others v RAF 2012 ZASCA 69 (SCA) at par 15 citing with approval Jameson's minors v CSAR 1908 TS 575 at par 603
6. M vs Minsiter of Police 2013 (5) SA 622 (GNP) at p.635
7. Groenewald v RAF (74920/2014) [2017] ZAGPPHC 879 .. claimant need to prove only 1% negligence the part of the insured driver in order to succeed with her claim against the defendant. MS v RAF [2019] 3 ALL SA 626 (GJ) 25 March 2019 par 8
8. Caselines 10.4 Annexures to the application for default judgment , item 14
9. MacDonald and Others v Road Accident Fund [2012]ZASCA 69 (SCA) at par

