

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 735/2022

Reportable	Yes
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In the matter between:

CHULEZA SANDLA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

NOTYESI AJ

Introduction

[1] The plaintiff, Ms Chuleza Sandla, an adult woman residing at Msukeni Location, is suing the Road Accident Fund (the RAF), a juristic person established in terms of the Act¹, for a loss of support arising from a motor vehicle collision which occurred on 25 April 2021 at or near Ngxogi Location in the district of Engcobo. The accident resulted in the death of her biological brother, Buqaqawuli Nyembezi (the deceased) who succumbed due to the serious injuries that he had sustained². The claim is based on an allegation that the deceased, during his lifetime, had a duty to support the plaintiff, and indeed, he supported her.

[2] In terms of section 17(1)(a), the RAF is obliged to compensate any person in respect of any loss or damage which such person suffered as a result of any bodily

¹ Section 2 of The Road Accident Fund Act, 1996 [56 of 1996] – G17532 as amended.

² It was not in dispute that the deceased died as a result of bodily injuries sustained during the collision.

injuries to himself or herself or the death or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person within the Republic of South Africa if the injury or death is due to the negligence or other wrongful conduct of the driver of a motor vehicle.

[3] The RAF is defending the action on three fundamental bases. First, it contended that the plaintiff had no locus standi to sue the RAF as she was a sibling; second, the RAF had submitted that the deceased had no duty to support the plaintiff and consequently, the plaintiff has no right to claim compensation from the RAF; and third, the RAF contended that as the plaintiff at the time of the accident was 28 years of age, she had attained the age of maturity and therefore, even if the deceased had a duty of her support, by virtue of her age, that duty would have terminated with the result that the deceased no longer owed the plaintiff any duty to support.

[4] At the commencement of the trial, the parties agreed on the separation of merits and quantum. It was pointed out by the parties to this Court that there were other claims which involved the children of the deceased and other dependants. According to the parties, the claims in respect of the other claimants were resolved. The present claim is the only outstanding claim on the basis of the contentions by the RAF. Although this court-ordered separation in view of the agreement by the parties, the nature of this case, in my view, ordinarily requires a hearing of both merits and quantum.

[5] The plaintiff bears the onus to prove the liability of the RAF and therefore has a duty to adduce evidence in support of her claim.

The parties

[6] For the sake of simplicity, the parties shall be referred to as 'the plaintiff', 'the RAF' and the plaintiff's brother shall be referred to as 'the deceased'.

The issues

[7] In a proper conspectus, the issue for determination is whether or not the

deceased had a legal duty to support the plaintiff; and if so, whether the plaintiff has a valid claim for loss of support against the RAF.

The agreement of the parties

[8] Prior to the commencement of the proceedings, the parties submitted an agreed statement of facts and a joint practice note. Although the matter did not proceed as a stated case, the agreement between the parties was submitted to court as a statement of common cause facts. According to the agreement, these facts are common cause –

- ‘1. The first plaintiff, Chuleza Sandla (“Chuleza”) was 28 years old at the time of the accident.
2. Buqaqawuli Nyembezi (“the deceased”) whose death was as a result of a motor vehicle collision that occurred on 25 April 2021 is Chuleza’s biological brother.
3. Chuleza was a registered student at Walter Sisulu University until December 2022.’

[9] The plaintiff contended that she has locus standi to institute these proceedings in order to vindicate her right of support which she lost as a result of the death of Buqaqawuli Nyembezi.

[10] The plaintiff contended that the deceased, through his actions, had created a binding obligation upon himself to maintain and support the plaintiff financially.

[11] The deceased’s death, as a result of the conduct of the insured driver, had deprived the financial support that the deceased had been providing the plaintiff and as such, the defendant is liable to compensate her for such loss.

[12] The defendant contended that the plaintiff has no locus standi in these proceedings.

[13] The defendant contended that the deceased had no duty to support the plaintiff and consequently had no right to claim compensation from the defendant.

[14] The defendant contended that due to the fact that the plaintiff had attained the age of maturity at the time in which the accident which gave rise to the plaintiff's claim occurred, the deceased no longer owed the plaintiff a duty of support.

The joint practice note

[15] In terms of the joint practice note, the plaintiff's claim is based on the provisions of section 17(1) (a) of the Act.

[16] In summary, the version of the plaintiff would be that – the plaintiff's brother was a driver of a motor vehicle on 25 April 2021 and the vehicle that he was driving became involved in an accident where he suffered fatal injuries that led to his death. The plaintiff is claiming for loss of support against the RAF. The plaintiff's brother used to support the plaintiff during his lifetime and as a result of the accident and the death of the plaintiff's brother, the plaintiff suffered loss of support.

[17] The defendant's version would be that – the plaintiff has no claim against the RAF for the reason that her brother had no legal duty to support her and therefor, the claim against the RAF has no merit and the plaintiff has no locus standi to institute the claim against the RAF. The defendant further contended that the plaintiff, at the time of the accident, had attained the age of maturity and therefor was not supported by the deceased.

The evidence

[18] Only the evidence of the plaintiff was adduced during the trial. The upshot of the evidence was that – she was born on 9 January 1993. Both her parents are deceased. She holds three tertiary qualifications. She holds a Diploma in National Journalism which she completed in December 2021. In December 2022, she obtained an advanced Diploma in Journalism. In 2017, she obtained a Higher Certificate in Broadcasting. She is unemployed. The mother passed on when she was only 13 years of age. Upon the passing of her parents, she became dependent upon her late brother. The brother was the only surviving sibling.

[19] Her late brother was responsible for her schooling and welfare. Her brother supported her. She had obtained her matric in 2011 when she was 18 years of age. Due to the unavailability of funds for tertiary education, she had delayed for five years. The reason for the delay and the lack of funds was that the brother had to first build a home. Her late brother was employed by the Department of Police.

[20] The brother passed on 25 April 2021. At the time when the brother passed on, she was 28 years old, and holding her tertiary qualifications. As a result of the death of her brother, she is experiencing financial difficulties as she is not employed. She had been unsuccessfully seeking employment.

[21] During cross-examination, she confirmed that her brother died whilst she was doing her second tertiary qualification. On questioning by the court, the plaintiff confirmed that she was not nominated as a dependent to her late brother, although he was a police officer. She testified that she did not inherit from her late brother, nor filed any claim against his estate. According to her, the wife of the deceased inherited from the late brother. She confirmed that she never filed any claim against the wife of her late brother. The late brother had surviving children. She confirmed that she also has her own child and that she is presently 31 years old.

[22] She further testified that her child is maintained by the father of her child with whom the child is primarily residing. On being questioned whether the brother, if he was alive, would still be maintaining her, she confirmed. On a further question on whether she would take her late brother to the maintenance court if he failed to maintain her, she answered that she would not force her brother for maintenance. When asked to elaborate on her response, she confirmed that her late brother was not bound to maintain her. For the sake of completeness, I quote from the transcript in this regard.

‘Court: Why you could not force him, any reason – particular reason?’

Ms Sandla: It is because he was not bound [?] – or forced rather.’

The legal framework

[23] In *Paixao and Another v Road Accident Fund*³ the court held –

‘The existence of a dependant’s right to claim support which is worthy of the law’s protection, and the breadwinner’s correlative duty of support, is determined by the boni mores criterion, or as Rumpff CJ in another context put it in *Minister van Polisie v Ewels*, the legal convictions of the community. This is essentially a judicial determination that a court must make after considering the interplay of several factors: “the hand of history, our ideas of morals and justice, the convenience of administering the rule and our social ideas of where the loss should fall”. In this regard considerations of equity and decency” have always been important. Underpinning all this are constitutional norms and values. So the court is required to make a policy decision based on the recognition that social changes must be accompanied by legal norms to encourage social responsibility. By making the boni mores the decisive factor in this determination, the dependants’ action has had the flexibility to adapt to social changes and to modern conditions.’

[24] In *Road Accident Fund v Mohohlo*⁴ Rogers J held-

‘However, the legal convictions of the community are not static. It may well be that a legal duty of support which depends on nothing more than the happenstance of a blood relationship should be kept within the limits indicated in our old authorities. Our ideas and morals and justice may not, in general, insist on support between more distant relatives. It by no means follows that the same approach should be followed where the blood relationship has been fortified by additional circumstances. And in answering the latter question, one must have regard to the values underlying our Constitution. One of these is ubuntu: “The spirit of ubuntu, part of the deep cultural heritage of the maturity of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for humanitarian interdependence, respect and concern.’

³ *Paixao and Another v The Road Accident Fund* 2012 (6) SA 377 (SCA).

⁴ *Road Accident Fund v Mohohlo* (882/2016) [2017] ZASCA 155; 2018 (2) SA 65 (SCA).

[25] In *Langa and Others v Road Accident Fund*⁵ it was held –

‘Our law takes a generous view towards the duty of support by recognising the changing nature of relationships of dependency in modern society. The point of departure is whether a dependant has a claim worthy of protection by law. The answer is determined by reference to the morality of society, which is divined by an exercise of judicial policy-making aimed at acknowledging that social changes warrant legal norms to encourage social responsibility. Our law has thus recognised that the duty of support extends to children, parents and even siblings, such as in this case, with due regard to factors such as morality, justice and the history of support even in instances where such support was not mandatory or typical.’

[26] The duty of support between siblings was considered in *Ex Parte Pienaar*⁶. There it was stated that the duty of nearer relatives must be considered before remoter relatives can be held liable. Nonetheless, in Roman-Dutch Law a duty of support exists between brothers (including half-brothers).⁷ The court thus held in that case that a duty did exist for a sibling to support his sisters and brothers. As in all cases, the degree or scope of maintenance is a matter of some difficulty but is usually payable to an indigent person and at the discretion of the judge. The court went on to consider for how long such a duty endures and concluded –

‘The next question is when does the right to receive these payments cease .The duty of support due by a parent to a child may involve the duty to afford the child a university education ... No authority has been quoted to me which suggests this applies also as between brothersAs I read (the authorities) ...it cannot be the duty of a brother to support a brother who is physically and mentally well after the latter has attained majority ..’

[27] In *Langa and Others v Road Accident Fund*⁸ (para 15), Murphy J made the following remark –

‘The general principle thus would seem to be that a sibling's duty to support his or her indigent sibling would normally not endure beyond the latter

⁵ *Langa and Others v Road Accident Fund* (2014/67644) at para 12.

⁶ *Ex Parte Pienaar* [1964] 2 ALL SA 62 (T); also see *Langa* supra at para 14.

⁷ Voet 25.3.8 (Gane's translations Vol 4).

⁸ *Langa and Others v Road Accident Fund* supra

attaining the age of majority. However, the learned judge was at pains to point out that his conclusion to that effect in the case before him rested upon his interpretation of an applicable agreement which had been made an order of court. He thus left open the question of whether the common law might be developed in accordance with prevailing *boni mores* to allow for such a duty to extend beyond majority. There is no need to canvass that issue further in the present case as the parties have agreed on the amount payable in the event that I find such a duty does exist.’

[28] In *Knop v Johannesburg City Council*⁹ it was held –

‘In short, recognition of a duty of care is the outcome of a value judgment, that the plaintiff invaded interest is deemed worthy of legal protection against negligent interference by conduct of the kind alleged against the defendant. In the decision whether or not there is a duty, many factors interplay; the hand of history, our ideas of moral and justice, the convenience of administering the rule and our social ideas as to whether the loss should fall. Hence the incident and extent of duties are liable to adjustment in the light of the constant shifts and changes in community attitudes.’

[29] In *Amod v Multilateral Motor Vehicle Accidents Fund*¹⁰, Mohammed CJ confirmed the approach adopted in *Santam Bpk v Henery*¹¹ when assessing the validity of a dependant’s claim for loss of support. The correct approach is the following –

‘(a) The claimant for loss of support resulting from the unlawful killing of the deceased must establish that the deceased had a duty to support the dependant; (b) It had to be a legally enforceable duty; (c) The right of the dependant to such support had to be worthy of protection by the law; (d) The preceding element had to be determined by the criterion of *boni mores*. (e) Thus approached, the claim of a widow who had been divorced at the date of the death of the deceased but who had been entitled to support from him, by virtue of an order of maintenance made by a Court, could be accommodated

⁹ *Knop v Johannesburg City Council* 1995 (2) SA 1 (A) at 27G-I; see also *Du Plessis v RAF* 2004 (1) SA 359 (SCA).

¹⁰ *Amod v Multilateral Motor Vehicle Accidents Fund* 1999 (4) SA 1319 (SCA); 1999 ALL SA 421 (A) at para 12.

¹¹ *Santam Bpk v Henery* [1999] ZASCA 5; 1999 (3) SA 421 (SCA) at 425H-426A.

within the legitimate parameters of the dependant's action in the common law because:

- (1) the deceased had a duty to support the claimant who was his former wife;
- (ii) that duty was legally enforceable;
- (iii) the right of the former wife to such support was a right which was worthy of protection by the law, for the purposes of the dependant's action; and
- (iv) the last assessment was justified by the criterion of boni mores.'

[30] On the basis of the above principles, I will consider the submissions of the parties.

Submissions by the parties before this Court

[31] Mr Nabela, counsel for the RAF, had submitted that this Court should consider the claim of the plaintiff based on three factors. First, the claimant's inability to support herself; second, her relationship to the deceased; third, the latter's ability to provide support. I agree with this submission. Mr *Maduma*, who appeared for the plaintiff, correctly conceded the submission based on the legal principles.

[32] Mr Maduma contended that by now it is axiomatic that the duty of support extends to siblings and he relied on the authorities of *Mohohlo v Road Accident Fund* and *Langa and Others v Road Accident Fund*. In advancing his submission, Mr Maduma submitted that the unquestionable evidence is that the deceased had assumed the position of being the father to the plaintiff and that he supported the plaintiff towards her education. In this regard, the contention was that the deceased had provided the plaintiff with clothing, and housing and he would often deposit monthly expenses for the plaintiff and at times, pay her tuition fees.

[33] In this regard, Mr Mdube contended that by his own conduct and action, the deceased had created a responsibility towards the plaintiff and actually assumed a binding duty to support the plaintiff. For those reasons, the contention was that the legal duty was created and is deserving of legal protection. The plaintiff's counsel pointed out that the plaintiff was unemployed and that she is an indigent person as a result of the death of her brother. Mr *Mdube* relied on the case of *Kriel v Road*

*Accident Fund*¹² where Daffue ADJP, in dealing with the claim of unmarried life partners, had this to say –

‘Volks, therefore, does not stand in the way of the appellants’ submission that the common law may be developed to extend the dependants’ action generally to unmarried parties in heterosexual relationships or to any other relationships.’

[34] Mr Nabela submitted that it should be accepted that common law recognises that parents are the primary caregivers of their children and accordingly, the law imposes a duty of support insofar as they are able to do. That duty also arises in respect of their indigent parents, if the children are able to support them. Mr Nabela relied on the provisions of section 18(2) of the Children’s Act and put an emphasis on a reciprocal duty of support between parents and children. Whilst Mr Nabela conceded that on the authority of *Oosthuizen v Stanley*¹³ an indigent brother or sister might be entitled to claim support from a sibling if the parents are unable to provide, he submitted that such a right would not normally endure beyond the age of maturity. In relation to this case, Mr Nabela submitted that for the reasons that the plaintiff had already attained the age of maturity when her brother died, and the fact that the plaintiff is physically and mentally well, there can be no basis to claim against the RAF.

Evaluation and analysis

[35] When the plaintiff’s brother died in an accident, she was 28 years old. She had three qualifications. She holds a Diploma in National Journalism which she completed in December 2021. In December 2022, she obtained an advanced Diploma in Journalism. In 2017, she obtained a Higher Certificate in Broadcasting. These are post-matric qualifications.

[35] I accept that there is a duty of support that exists between siblings. In this regard, I rely on the authority of *Ex Parte Pienaar*¹⁴, where it was stated that a duty did exist for a sibling to support his sisters and brothers. As in all cases, the degree

¹² Kriel v Road Accident Fund [2020] ZAFSHC 42.

¹³ Oosthuizen v Stanley 1938 AD 322 at B-311.

¹⁴ Ex Parte Pienaar footnote no: 6.

or scope of maintenance is a matter of some difficulty but is usually payable to an indigent person and at the discretion of the judge. Also, in *Road Accident Fund v Mohohlo*¹⁵ where it was stated –

‘Cachalia JA went on to refer to a passage from Mahomed CJ’s judgment in *Amod v Multilateral Motor Vehicle Accident’s Fund (Commission for Gender Equality Intervening)* 1999 (4) SA 1319 (SCA) para 7 where the Chief Justice said that the precise scope of the dependant’s action was unclear from the writings of the Roman-Dutch jurists and that there were passages in Grotius and Voet perhaps suggesting that the action might be extended to any dependant within the deceased’s “broad family whom he in fact supported whether he was obliged to do so or not” or to any dependant enjoying a “de facto close familial relationship with the breadwinner”. As I have said, Voet and others were quite clear that there was no legal duty of support beyond the second degree of consanguinity.’

[37] On the strength of authorities, I accept that the plaintiff does have locus standi to claim as a sibling to the deceased. The matter must not end there. The next question is whether the plaintiff has any claim on the facts of this particular case. In *Meteso v Padongeluxsfonds*¹⁶ the court observed –

‘It seems to me that these cases demonstrate that the common law has developed to recognise that a duty to support can arise, in a given case, from the fact-specific circumstances of a proven relationship from which it is shown that a binding duty of support was assumed by one person in favour of another. Moreover, a culturally imbedding notice of “family”, constituted as being a network of relationships of reciprocal nurture and support, informs the common law’s appetite to embrace, as worthy of protection, the assumption of duties of support and the reciprocal right to claim support, by persons who are in relationships akin to that of a family. This norm is not parochial, but rather, is likely to be universal; it certainly is constant both with norms derived from the Roman-Dutch tradition.... and, no less, from norms derived from African tradition, not least of all, as exemplified by the spirit of Ubuntu...’

¹⁵ Supra footnote no: 4 at para 11.

¹⁶ *Meteso v Padongeluxsfonds* 2001 (3) SA 1142 (T), also quoted in *Langa and Others v Road Accident Fund*.

[38] My immediate difficulty with the plaintiff's case is that at the time of her brother's death, she was already 28 years of age. She had obtained at least three post-matric qualifications. The fact that she is unemployed, reflects the general social challenges in South Africa. According to the statistics, out of a population of 60 million people, 11 million are unemployed. In such cases, it is common knowledge that graduates are struggling for employment. Whilst that is a regrettable situation, it should not give rise to an overflow of claims against the RAF on the basis of loss of support in cases such as this.

[39] I agree with the statement made in the case of *Ex Parte Pienaar* that –
 'The next question is when does the right to receive these payments cease ...
 .The duty of support due by a parent to a child may involve the duty to afford the child a university education .No authority has been quoted to me which suggests this applies also as between brothers .As I read (the authorities) .it cannot be the duty of a brother to support a brother who is physically and mentally well after the latter has attained majority .'

[40] In my view, the deceased had no legal duty to support the plaintiff after she had attained the age of maturity and had obtained post-matric qualifications. The plaintiff was in a position to seek for her employment. The plaintiff was physically and mentally well. She could, on her own, find various ways upon which she could survive. In this view, I also consider the fact that the RAF has paid for the claims in respect of the children and the wife of the deceased. The plaintiff, herself, has conceded that she could not force the deceased to support her and therefore, that must answer the question whether there was a legal duty of support. In consideration of each of these circumstances, there was no legal duty for the deceased to support the plaintiff. The plaintiff has also failed to produce any evidence that there was an agreement between her and the deceased regarding her support. Absent the agreement of whatever nature, is fatal to the plaintiff's claim. The correct position of our law is that the duty to support siblings would normally not endure beyond the age of maturity. This does not mean that there cannot be exceptions. One of the exceptions would be a situation where the sibling would be physically and or mentally incapable of supporting him or herself. This is not such a case.

[41] I have also considered the principles of customary law as I am required in terms of section 211(3) of the Constitution. In customary law, brothers are expected to look after their sisters, irrespective of their age. However, the specific facts in the present case do not avail of any remedy to the plaintiff. The plaintiff, too, did not rely on the customary law principles. Had she relied on the customary law principles, more evidence would have been required. In this case, the plaintiff holds at least three post-matric qualifications. The deceased had children and a wife. The children and wife have inherited and also claimed from the RAF. The plaintiff was not even nominated as a beneficiary of the deceased. There is not enough evidence to support a conclusion that the deceased was supporting the plaintiff.

[42] For all these reasons, I am not satisfied that the plaintiff has made out a case.

Findings

[43] Based on the fact that the plaintiff was 28 years old at the time of the death of her brother and that she holds three post-matric qualifications and that she was not entitled to inherit from the deceased in terms of the Intestate Act or customary law, the claim of the plaintiff should fail. I have also considered that there was no legal duty of support that existed between the plaintiff and the deceased. I also took into account the fact that the deceased had left his heirs, being his wife and his children. The plaintiff also failed to produce evidence of any duty of support between the deceased and herself. All these factors lead to the conclusion that there was no duty of support that existed between the plaintiff and the deceased and therefore, the loss of support does not arise.

Conclusion

[44] For all the reasons set out above, I come to the conclusion that the plaintiff's claim should fail. The general rule is that costs should follow the event. In the present case, I will depart from the general rule. The plaintiff is a sibling of the deceased. The action, in my view, was instituted with bona fides against a public institution. The brother of the plaintiff had died in a car accident. The plaintiff is unemployed. After careful consideration of all these facts, I come to the conclusion

that in the exercise of my discretion, I should not award costs in favour of the RAF. In the circumstances, the appropriate remedy for costs would be that each party should pay its own costs.

Order

[45] In the result, I make the following order –

- (1) The plaintiff's action against the RAF is dismissed.
- (2) Each party to pay its own costs.

M NOTYESI
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the plaintiff :	Adv Maduma
Instructed by:	Makangela Mtungani Inc Mthatha
 Counsel for the defendant:	 Adv Nabela
Instructed by :	The State Attorney Mthatha
 Heard on:	 20 March 2024
Judgment Delivered on:	20 June 2024