REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 1058/2018

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE

SIGNATURE

In the matter between:

M[...] L[...] M[...] **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

MPHELELA AJ:

1. This matter came before court for the determination of both merits and quantum. It is a claim for loss of support instituted by the plaintiff on behalf of the minor child L[...] K[...] M[...] born on the 9th April 2014. The plaintiff's claim arose from a motor vehicle accident which occurred on the 02nd May 2016 when the deceased Eleck Mamohlalathuhu was involved in a motor vehicle accident. As a result the plaintiff has instituted a claim for loss of support against the defendant in the amount of R1700 000.00

2. The plaintiff has complied with all the statutory requirement in term of instituting a claim against the defendant under the circumstances. The summonses were issued on the 21st February 2018 and served with the defendant on the 23rd February 2021. At the beginning the plaintiff instituted a claim on her behalf and on behalf of her minor child L[...] K[...] M[...] with identity number 1[...]. At the time of the accident the minor child was only two years old when the father passed in the accident.

3. The matter was to proceed on both merits and quantum. The plaintiff did not call any witness and opted to proceed on papers before court. The plaintiff's claim is that on the day of the accident, the deceased was driving a motor vehicle with registration numbers and letters B[...] when he collided with another vehicle with registration numbers and letters H[...] driven by one Steven Richard Maube(The Insured driver).

4. The plaintiff in her section 19(f) affidavit indicates that she was having a love relationship with Elleck Mamohlala Thuli Tau who died on the 02nd May 2016 due to a motor vehicle accident. At paragraph 6 of the affidavit she indicates that "My boyfriend was employed by Dwasriver Chrome Mine, Mpumalanga Province and was financially supporting me and my children and all dependent on him for maintenance and financial support". The plaintiff further submits that her child and herself had suffered and will continue to suffer loss of support due to her boyfriend untimely death which was caused by the negligent driving of the insured driver. The normal(general) standards grounds of

negligence are indicated in her statement. It must be indicated that she was not at the scene of the accident and that she also did not witness the accident.

5. The plaintiff counsel submitted that they only need to proof one percent negligence against the insured driver and as such they are of the view that, they will proof the required negligence against the insured driver. I must indicate from the beginning the lack of preparation from the counsel of the plaintiff in this matter in that the attorney of record had to literally take over the matter by showing the counsel almost each and every documents including affidavits which he must direct the court to. Unfortunately because of lack of preparation, the counsel still could not understand what the attorneys was directing him to in that when directed to refer the court to certain documents including statements, he will only read statements word by word until the end and makes no submission thereafter. It is not clear what he wanted the court to do with such reading of the file during the proceedings.

6. However, he indicated that he did not read the entire file as he only read the docket as he believe with the contents of the docket he will be able to proof the 1% required to succeed with the entire claim for loss of support. The counsel then continue reading the investigation diary by the police officers. It must also be indicated that nothing much in-favour of the plaintiff's case came out of the reading of the diary. The diary only confirms the accident and the parties who were involved in the accident, further to that it also confirms that the Polo vehicle (Driven by the deceased) was overtaking when the accident occurred. Nothing much came out of the reading of the diary.

7. The counsel was further referred to statement by the Police officer which he read on record and made no submission. The statement by the Officer also describe what they found on the scene and how they took over the scene of the accident. There is again no explanation on how the accident occurred. The counsel was also made to refer to statement by the driver of the other vehicle (Truck) which was also involved in the accident. The truck driver statement read as follows: "On 2016 05-02 at about 20h50 I

was driving on the Sekhukhune Lydenburg Road when I was about to approach Boschfontein Bridge. I met two trucks heading to Lydenburg and the Polo trying to overtake in a high speed. The Polo wanted to head on with my Truck, I tried to avoid it, it then hit me on the Deaf of the truck and the right front Tyre and loss control of the truck. And the Police attended the scene and I was taken to hospital Lydenburg".

8. Upon reading the statements the counsel submitted that a case has been proved on behalf of the plaintiff for loss of support and that the plaintiff should succeed on 100% in respect of merits. When engaged as to on how did the plaintiff prove negligence of the insured driver in that the evidence before court is that the deceased was overtaking when the collision occurred. The counsel for the plaintiff indicated that on the basis that there is a case for culpable homicide opened by the police against the insured driver, it gives the plaintiff the required 1% to prove negligence against the insured driver.

9. It must be indicated that, there was a serious lack of preparation and proper investigation on this matter from both the counsel and the Attorneys for the plaintiff. Both parties should have seen that this matter is not ready to be brought before court with the evidence they had. They are not able to even put one percent negligent on the part of the insured driver. The case was still under investigation, they did not bother to get the outcome of the investigations and then expect the court to assume that on the basis that there were charges against the surviving driver (Insured) driver, that automatically translate into negligence.

10. In my view the plaintiff has failed to prove the required 1% negligent against the insured driver. However, I am of the view that, the legal representatives of the plaintiff has not done enough to proof the case on behalf of the plaintiff, there is no evidence before court upon which the court could find in favour of the plaintiff nor against the plaintiff.

11. With respect to costs and having considered the lack of preparation from both the attorneys and the counsel, I am of the view that both of them should not be entitled to charging any fees against the plaintiff.

12. Under the circumstances the court makes the following order:

A) Absolution from the instance is granted.

B) Both Attorney and Counsel are not allowed to charge the plaintiff any fee relating to this hearing.

T C MAPHELELA
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE PLAINTIFF : ADV K MOKWENA
INSTRUCTED BY : DIRECTOR MAKHAFOLA INC

FOR THE DEFENDANT : NO APPEARANCE
INSTRUCTED BY :

DATE OF HEARING : 07 NOVEMBER 2024
DATE OF JUDGEMENT : 28 JANUARY 2025