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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: 5896/2023

In the matter between:

L[...] B[...] T[...] OBO MINORS

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *L[...] B[...] T[...] obo Minors v The Road Accident Fund (5896/2023)*

Coram: **Mpama AJ**

Heard: **13 November 2024**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be **22 January 2025 on 14H30**.

Summary: claim for loss of support arising out of a motor vehicle accident – defendant disputing whether deceased was a passenger in the vehicle – deceased found to have been a passenger and not driver – liability for compensation confirmed.

ORDER

- 1 The deceased was the passenger in the insured vehicle.

- 2 The defendant is liable to compensate the plaintiff for any proven damages arising out of the deceased's accident on 06 July 2019.

- 3 Quantum is postponed *sine die*.

- 4 The costs shall be costs in the cause.

JUDGMENT

MPAMA AJ

[1] This is an action for loss of support arising from a motor vehicle collision which occurred on 6 July 2019 at Tosi Street, Phuthaditjhaba, Free State, involving a Polo motor vehicle with registration number JYS[...]. The claim follows the death of the plaintiff's husband, Mr D[.] T[...] N[...] (the deceased).

[2] The plaintiff lodged a claim against the defendant in her personal capacity as the wife of the deceased and in her representative capacity as the mother of the minor children, namely, K[...] T[...] N[...]1 and K[...] T[...] N[...]2, born on [...] A[...] 2008.

[3] The matter came before me on 12 November 2024. At the time, the defendant was duly represented and the matter was, by agreement, postponed to the following day in order to afford the parties one last opportunity to settle the matter. On behalf of the defendant, it was placed on record that the defendant will not be in attendance on the next day and the matter, if not settled, will proceed by way of default.

[4] Indeed, as intimated by the defendant, there was no appearance by the defendant on 13 November 2024. The plaintiff informed the court that the only issue for determination was whether the deceased was the driver of the vehicle in order to establish the defendant's liability and requested the court to postpone quantum *sine die*.

[5] The plaintiff applied for some affidavits to be admitted in terms of rule 38(2) of the Uniform Rules of Court. I acceded to the request and the following affidavits were admitted: statements of Fusi Mofokeng and Zwelebanzi Solani marked exhibits 'A' and 'B' respectively. Later on, an accident report (the report) was handed in and marked Exhibit 'C'. No further evidence was presented. It was argued on behalf of the plaintiff that the two statements indicate, without an inch of doubt, that the deceased was a passenger in the vehicle. It was further argued that in the absence of evidence to the contrary, the court should find that the deceased was a passenger in the vehicle and that the defendant is liable to compensate the plaintiff for her loss.

[6] It is trite that the plaintiff bears an onus of proof on a balance of probabilities. I am called to adjudicate on whether the deceased was a passenger or a driver of the vehicle.

[7] The statement of Mr Fusi Mofokeng, admitted as an Exhibit 'A' stated that he was the driver of the insured vehicle when the accident took place. The statement went further to describe how the accident took place. This is corroborated by the evidence of Mr Zwelebanzi Solani, admitted as Exhibit 'B'. No evidence to the contrary was presented.

[8] Moreover, the report depicted that Mr Fusi Mokoena was the driver of the vehicle. It is so that where the name of the driver appeared on the report, the name of the deceased has been noted and then crossed. In the same space, the name of Mr Fusi Mofokeng has been appended. This appears to be the basis for the defendant's plea that the deceased was the driver. However, on the same

report under the subheading 'PARTICULARS OF KILLED OR INJURED PASSENGERS AND PEDESTRIANS' the deceased has been listed as having been a passenger in the vehicle.

[9] Further examination of the report revealed that the report has been altered on more than four instances, including where the name of the driver appeared as explained above. My observation is that the report itself is a clumsy, unskillful and badly written document. Some information is lacking and on certain instances, where a selection ought to have been made, no such selection was made.

[10] In the past, the Appellate Division in *S v Xaba*¹ expressed itself as follows: ' . . . that the police statements are, as a matter of common experience, frequently not taken with the degree of care, accuracy and completeness which is desirable.'² I find these sentiments expressed by the Appellate Division, almost 32 years ago, still applicable even today. Little or nothing has improved on how the police obtain statements or record information for the purposes of further investigations. This report is no exception. More is still needed to improve record taking by police officers.

[11] I am satisfied that despite the shortcomings in the report, the uncontroverted evidence establishes on a balance of probabilities that the deceased was a passenger in the insured vehicle. The defendant's plea that the deceased was the driver is not supported by the evidence and therefore cannot be sustained.

Order

[12] In the circumstances, I make the following findings:

¹ *S v Xaba* 1983(3) SA 717(A).

² *Ibid* at 7308-C.

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- 2 The defendant is liable to compensate the plaintiff for any proven damages arising out of the deceased's accident on 06 July 2019.
- 3 Quantum is postponed *sine die*.
- 4 The costs shall be costs in the cause.

L. MPAMA, AJ

Appearances

For the plaintiff:	Adv N.A. Feza
Instructed by:	Messrs Nangamso Meintjies Inc.
	c/o Messrs Thebe Attorneys
	Westdene
	Bloemfontein
For the defendant:	No appearance