



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable**

Case no: 15124/2022

In the matter between:

**L[...] E[...] C[...]**

**PLAINTIFF**

And

**ROAD ACCIDENT FUND**

**DEFENDANT**

**Neutral citation:** *C[...] v Road Accident Fund* (Case no 15124/2022) [2025]  
ZAWCHC 402 (04-09-2025)

**Coram:** **NUKU J**

**Heard:** 28-9 June 2025

**Delivered:** 04 September 2025

**Summary: Delict** – action for damages – loss of support – mother claiming loss of support for herself and two minor children resulting from her husband's death – whether

her income should be considered when calculating the loss of support claim – whether a separate contingency deduction should be applied regarding remarriage prospects in the absence of evidence establishing such prospects.

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### **ORDER**

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1 The defendant is liable to pay the plaintiff the sum of R4 906 290 together with interest and costs, in terms of the draft order attached hereto marked “X”.

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### **JUDGMENT**

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#### **Nuku J**

[1] The plaintiff is the surviving spouse of the late Ryan John Linderboom (“deceased”), with whom she has two minor children, born in 2016 and 2018. The deceased sustained fatal injuries on 9 March 2020 when he was hit by a motor vehicle, with registration C[...] (“insured vehicle”), which was being driven by Mr Reggie Ntaka (“insured driver”) at the time.

[2] The plaintiff has instituted this action both in her personal capacity and in her capacity as the mother and natural guardian of her two minor children. She claims a loss of support for herself and her children resulting from the death of the deceased.

[3] The defendant admitted liability but disputed the amount claimed by the plaintiff. The main point of disagreement between the parties concerns the deceased's pre-morbid career path. Secondary issues relate to the deductions to be made in calculating the loss of support. These include the deductibility of the plaintiff's earnings, the contingency deduction to be applied in computing the loss, and whether there should be

an additional contingency deduction that considers the plaintiff's prospects of remarriage.

[4] The plaintiff's stance on the main issue, which I discuss in more detail below, is that the deceased would have advanced to the position of Regional Manager within three to five years from the date of his death, whereafter he would have remained for the rest of his life, with his income increasing annually in line with inflation.

[5] The defendant's position, on the other hand, is that the deceased would not have progressed beyond his role at the time of his death and that his income would have increased annually in line with inflation.

[6] Regarding the secondary issue about deductions, the plaintiff's position was that only general contingencies for life's uncertainties should be considered. It was argued that her earnings should be accounted for only up to the point at which the deceased would have been promoted to the Regional Manager position. This contention was based on evidence indicating that she planned to retire upon the deceased's promotion to Regional Manager. Additionally, it was argued that the evidence did not justify an additional contingency deduction for the plaintiff's prospects of remarrying.

[7] The defendant, on the other hand, argued that, in addition to general contingencies for life's uncertainties, a further deduction should be made to account for the possibility of the plaintiff's remarriage. The defendant also disagreed with the plaintiff regarding the percentages to be applied, as well as the deductibility of the plaintiff's earnings.

[8] The questions for determination by this Court are: (a) the pre-morbid career path of the deceased, which will be used in calculating the plaintiff's loss of support claim; (b) whether and to what extent should the plaintiff's earnings be factored in calculating the loss of earnings, (c) whether an additional contingency deduction should be applied to

account for the plaintiff's prospects of remarriage; and (d) the percentage rates to be applied.

[9] The plaintiff testified in support of her claim. She also called one lay witness, Ms. Stephanie Dippenaar ("Ms Dippenaar"), and one expert witness, Ms. Lindy Emsley ("Ms Emsley"), an industrial psychologist. For its part, the defendant called one expert witness, Ms. Sandra Moses ("Ms Moses"), also an industrial psychologist.

[10] The plaintiff's evidence was that the deceased was employed at the time of his death as a Roaming Site Manager at RSC Retail Supply Chain Consulting Services ("RSC"), where he had worked since 2015. She had had several discussions with the deceased about his career progression, and it was from these discussions that she learnt about the possible promotion of the deceased to the position of Regional Manager. She had also learnt from the deceased that Mr Renier Blom ("Mr Blom"), who was the immediate supervisor of the deceased, had been mentoring the deceased in preparation for a possible promotion to the position of Regional Manager.

[11] The plaintiff also testified about the plans she and the deceased had if he were appointed as a Regional Manager. She stated that they intended for her to stop working so she could focus on raising their two children. According to the plaintiff, this plan was based on the belief that the deceased's income would be enough to support the family. Additionally, it would have helped her manage her pre-existing mental health condition. However, the death of the deceased meant she could no longer afford to stop working, as she became the sole breadwinner.

[12] According to the plaintiff, the deceased was a hardworking and dedicated worker, and the fact that he had only achieved a grade 9 level of education would not have been an obstacle to the deceased's progression. This was based on the plaintiff's knowledge that the deceased was being mentored by Mr. Blom, at the time to prepare him for that possibility.

[13] The plaintiff further testified that they wanted their children to pursue tertiary education and were content with having only two children, with no plans for more. She testified that she has not remarried since the death of the deceased and that she has no interest in getting remarried. This is because her primary focus is on raising the children and looking after her mental wellbeing.

[14] Ms Dippenaar was employed at RSC as a Human Resources Manageress until 2023 and knew the deceased as they had worked together for three years. Ms Dippenaar also knew Mr Blom because they both reported to the General Manager responsible for the Western Cape. She testified that a succession plan was in place, and according to that plan, the deceased had been identified for promotion to the role of Regional Manager. She stated that the promotion of the deceased to the position of Roaming Site Manager was the first step in implementing that plan. This promotion would allow the deceased to build relationships with clients and staff.

[15] Ms Dippenaar testified that establishing the succession plan was part of her responsibilities. She also confirmed that Mr Blom had been mentoring the deceased. She stated that there were no prescribed minimum educational qualifications for the position of the Regional Manager. She further explained that the deceased having a grade 9 level of education would not have hindered his progression, due to his operational aptitude as a dedicated, ambitious, and quick learner. According to her, the deceased 'was going places'.

[16] According to Ms Dippenaar, the deceased possessed a strategic mindset, was skilled at motivating others, and would have made a good Regional Manager. This is based on the positive feedback that RSC had received from clients who had interacted with the deceased.

[17] Ms Dippenaar also provided evidence regarding the corporatisation of RSC. In this regard, she stated that it is likely the deceased would have already been appointed as a Regional Manager when this occurred, and therefore, it would not have affected

him. She explains that the positions are first advertised internally before looking outside of the company.

[18] Finally, Ms Dippenaar testified that she, along with Mr Blom and the General Manager, had identified the deceased for a possible promotion to the position of Regional Manager. According to her, the deceased would have become a Regional Manager in less than five years from the time he was promoted to the position of Roaming Site Manager.

[19] Ms Emsley formally placed her qualifications and experience on record before confirming the contents of the two reports she prepared, dated 14 March 2023 and 24 July 2025. She confirmed the deceased's employment history, including that he was employed as a Roaming Site Manager at the time of his death. According to her, the deceased demonstrated a strong work ethic and had made significant progress since joining RSC.

[20] Ms Emsley testified that the search she conducted on the RSC website gave her the impression that RSC has a programme aimed at upskilling previously disadvantaged individuals. According to her, this is one of the factors that would have worked in favour of the deceased.

[21] Ms Emsley also provided evidence regarding job grading. She explained that the lowest level on the scale is the Paterson Band A. The role of Roaming Site Manager falls within the Paterson Job Grading levels from B5 to C3, depending on the complexity of the tasks. According to Ms Emsley, the position of Regional Manager falls within the Paterson D band, but for the purpose of calculating the deceased's pre-morbid earnings, she used the Paterson Bands C2 to C3. This was due to the less formal nature of the position at RSC, as well as the deceased's level of education. She concluded that the deceased would have progressed to the position of Regional Manager within three to five years of his promotion to Roaming Site Manager.

[22] Ms Emsley was asked why she did not consult the deceased's previous employers before joining RSC, and she explained that her decision was based on the fact that the deceased had been with RSC for some time. When questioned about the deceased leaving school due to learning difficulties, she readily conceded that this may be true. However, she pointed to the deceased's career history to suggest that he was able to progress despite having left school because of learning difficulties. She disagreed with the pre-morbid career path postulated by Ms Moses. That concluded the evidence on behalf of the plaintiff.

[23] Ms Moses formally placed her qualifications and experience on record before confirming the details of her report dated 26 April 2024. She expressed the impression that the deceased was a hard-working man. She believed that the deceased's limited education would have hindered his career progression beyond the position he held at the time of his death. This was also because competition increases as one advances through the grades.

[24] According to Ms Moses, individuals with a grade 9 typically perform unskilled work, while those with grades between 10 and 11 undertake semi-skilled work. She described the deceased as somewhat of an anomaly because he had advanced to performing semi-skilled work despite his limited education. However, she believed that the deceased would not progress beyond Paterson Band B3, primarily due to his limited education.

[25] She regarded the position of Regional Manager as generally senior and believed the deceased would find it difficult to meet the demands of that role. Her view was further supported by her knowledge that the deceased left school due to learning difficulties. In her opinion, the deceased would probably have remained in his role at the time of his death until retirement, receiving only annual inflationary increases. At best, he would have progressed to Paterson Band B5. However, Ms Moses did not provide a timeline regarding this possibility.

[26] During cross-examination, Ms Moses stated that she had not obtained any collateral information other than from the plaintiff. She explained that she did not consider it necessary to obtain collateral information, and in any event, she is always very sceptical about collateral information.

[27] When questioned about the feedback received by Ms Emsley regarding the deceased's work performance, Ms Moses stated that the deceased might have had hidden talents that he did not showcase during his school years. She acknowledged that the information suggests the deceased had been functioning at a level equivalent to a person with a Grade 12 education. Ultimately, she agreed that the deceased could have progressed to the level of Paterson Band C2/3. This concluded the evidence upon which the issues in this matter are to be determined.

[28] It was submitted on behalf of the plaintiff that the evidence of the two experts was diametrically opposed and that the evidence of Ms Emsley should be preferred. This was because Ms Emsley's evidence and opinions are based on collateral information she obtained at RSC, as opposed to Ms Moses, who deemed it unnecessary to obtain any collateral information other than from the plaintiff. It was further submitted that Ms Moses was not fully informed of the facts, including the succession plan in place at RSC.

[29] Based on Ms Emsley's evidence, it was submitted that the deceased would have likely advanced to the position of Regional Manager within two to five years of his death, and that he would have earned between R40 000 and R50 000.

[30] An actuarial calculation was prepared by Munro Forensic Actuaries based on the assumption that the deceased would have been promoted to the position of Regional Manager by March 2024 with a salary of between R40 000 and R50 000. It was also assumed that the plaintiff would have continued working until March 2024 in accordance with her plans with the deceased.

[31] It was submitted on behalf of the plaintiff that a contingency deduction based on half a per cent for each year that the deceased would have worked until retirement at the age of 65 was appropriate. Under this approach, two and a half per cent would be applied to the past loss of support and sixteen per cent to the future loss of support. Two further alternative scenarios were presented based on five per cent and twenty per cent for past and future loss of support in one, and ten per cent and thirty per cent in the other.

[32] Turning to the issue of an additional contingency deduction to account for the plaintiff's prospects of remarriage, it was submitted that this Court should follow the decision in ***LD v Road Accident Fund***<sup>1</sup> which held that, 'Unless the facts of a particular case clearly demonstrate that a higher than normal, and, special contingency for remarriage is to be deducted, such further contingency ought not be deducted.' The submission was that no evidence was presented to justify the deduction of a special contingency for remarriage.

[33] Regarding the plaintiff's earnings to date, it was submitted that her earnings should be considered up to March 2024, when she would have retired following the promotion of the deceased to the position of Regional Manager. It was submitted that this would place her in the same position she would have been in had the deceased not died.

[34] Mr Goosen, who appeared for the defendant, conceded that the calculation of the plaintiff's loss of support should rely on applying contingencies to the actuarial report prepared by Munro Forensic Actuaries. This was because of the compelling evidence presented by Ms Dippenaar and the concessions made by Ms Moses that the deceased would have likely advanced beyond his position at the time of his death. It was argued that a higher-than-normal contingency deduction is justified given the restructuring at RSC between 2020 and 2025. A deduction of seven per cent and twenty-five per cent

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<sup>1</sup> *LD v Road Accident Fund* (14606/2016) [2018] ZAGPPHC 181 (5 February 2018) at para [37].

for past and future loss of earnings, respectively, was suggested as appropriate in the circumstances.

[35] It was further submitted that an additional deduction should be applied to account for the plaintiff's remarriage prospects. In support of this argument, the defendant relied on two decisions of the Appellate Division in ***Hulley v Cox***<sup>2</sup>(***Hulley***) and ***Peri-Urban Areas Health Board v Munarin***<sup>3</sup>(***Peri-Urban Areas***).

[36] In *Hulley*, Innes CJ, dealing with deductions that may be justified in the computation of a loss of support claim:

‘The dependants are entitled to be compensated for the pecuniary loss involved in the reduced income and a restricted provision for the supply of what they had been accustomed to. But the object being to compensate then for material loss, not to improve their material prospects, it follows that allowance must be made for such factors as the possibility of re-marriage. Account must also be taken of eventualities which would have operated in any case.’<sup>4</sup>

[37] In *Peri-Urban Areas*, Holmes JA simply recognised, with reference to the decision of the Appellate Division in *Hulley*, that it is appropriate to consider remarriage prospects when assessing a claim for loss of support.

[38] The implications of the concession by the defendant that the actuarial report prepared by Munro Forensic Actuaries should be used as the basis for quantifying the plaintiff's claim were that it became unnecessary to determine the following issues: (a) the deceased's pre-morbid career path, (b) the deductibility of the plaintiff's earnings from March 2024, and (c) a separate contingency deduction for the plaintiff's remarriage prospects. In fact, the defendant proceeded to quantify the plaintiff's claim by applying a seven per cent deduction and a twenty-five per cent deduction, in respect of past and

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<sup>2</sup> 1923 AD 234.

<sup>3</sup> 1965 (3) SA 367 (A).

<sup>4</sup> At 244.

future loss of support, respectively, to the figures prepared by Munro Forensic Actuaries.

[39] The concession regarding the deceased's pre-morbid career path, had been explicitly made having regard to the evidence of Ms Dippenaar and the concessions made by Ms Moses.

[40] No explicit concession was made regarding the deductibility of the plaintiff's earnings beyond March 2024, but the actuarial report, as recorded above, was prepared on the assumption that the plaintiff would have ceased working upon the appointment of the deceased as a Regional Manager.

[41] As stated above, the plaintiff has had to continue working to support her family. For the period before March 2024, her loss of support has been reduced in proportion to her earnings, and the law clearly states that her earnings must be considered when calculating her loss of support.

[42] There has been a period from March 2024 to the present during which her earnings have been disregarded, based on the assumption that she would have stopped working once the deceased was promoted. On the surface, it appears that she receives compensation for more than her loss and that the distinction between the periods before and after March 2024, to the extent that she is still working, may be artificial. However, this aspect was not explored by the defendant, who was content to calculate the plaintiff's loss based on a contingency deduction.

[43] Whether the plaintiff's evidence that she would have stopped working upon the deceased's promotion justifies disregarding her income is not straightforward. I say this because this aspect seems to fall somewhere between the dependant's income that should be considered and the dependant's earning capacity that should not be taken into account. As Holmes JA stated in *Peri-Urban Areas*<sup>5</sup> stated:

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<sup>5</sup> At 376B-C.

‘A widow is therefore entitled to compensation for loss of maintenance consequent upon the death of her husband, but any pecuniary benefits, similarly consequent, must be taken into account. To suggest that she is obliged to mitigate her damages by finding employment is to mistake the nature of her loss.... She cannot be required to mitigate that loss by incurring the duty of supporting herself. If she does obtain employment, it is more appropriate to regard her earnings as being the product of her own work than as consequent upon her husband’s death.’

[44] The answer to the question ultimately depends on whether the plaintiff’s earnings are considered the result of her own work, given the circumstances, in which case they should be disregarded, or if they are due to the deceased’s death, in which event they must be taken into account. However, given the defendant’s approach to the matter as set out above, it has become unnecessary to decide this issue.

[45] Again, the defendant did not explicitly abandon the issue of a special contingency deduction for remarriage prospects. However, the authorities cited by the defendant, in my view, do not support the idea that an additional contingency deduction for remarriage prospects should always be applied. On the contrary, the discussion of contingencies regarding the possibility of remarriage is included under general contingencies. This aligns with the decision in *LD v Road Accident Fund*, which states that a special contingency deduction should only be made where evidence shows remarriage as a likely prospect. No such evidence was presented in the current matter, and, in any event, the defendant was content to quantify the plaintiff’s claim on the basis of a higher-than-normal contingency deduction.

[46] That leaves only the question of contingencies to be applied to the actuarial calculation prepared by Munro Forensic Actuaries. As stated, the defendant argued for a higher-than-normal contingency deduction to account for the changes that have occurred at RSC since then.

[47] The defendant's approach, however, overlooks the evidence presented showing that the changes at RSC would not have affected the deceased, as his path to promotion was already underway. This includes the evidence of Ms Dippenaar, one of the individuals responsible for the succession plan that identified the deceased as a potential candidate for the role of Regional Manager. The evidence also shows that the deceased was in the process of being mentored by Mr Blom, who was a Regional Manager at the time and has since left RSC. In my view, a higher than usual contingency cannot be justified.

[48] One of the plaintiff's alternative scenarios proposed a contingency deduction of five per cent for past loss of support and twenty per cent for future loss of support. This scenario, in my view, offers a reasonable basis for calculating the claim. While the evidence strongly suggested the deceased was likely to be promoted to the position of a Regional Manager, one cannot ignore the possibility that he would face stiff competition if he were to lose his job at RSC. This scenario also considers what may appear to be an improvement in the plaintiff's position, given that she has remained employed and is entitled to compensation for the period after March 2024.

[49] In terms of this scenario, the plaintiff is entitled to compensation in the sum of R4 906 290 which is made up as follows:

- a) R207 860 for past loss of support and R2 961 280 for past loss of support in her personal capacity; and
- b) R151 335 for past loss of support and R664 720 for past loss of support in her representative capacity as the mother and natural guardian of her minor child RL; and

- c) R151 335 for past loss of support and R769 760 for past loss of support in her representative capacity as the mother and natural guardian of her minor child LL.

[50] Regarding costs, the plaintiff has succeeded, and the usual rule that costs follow the result should apply. Such fees are to include the expenses occasioned by the employment of counsel, whose fees shall be taxed, for the relevant period, on scale B.

### **Order**

[51] Therefore, I issue an order in accordance with the draft order attached hereto marked "X".

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**LG NUKU**  
**JUDGE OF THE HIGH COURT**

### **Appearances**

For plaintiff: Mr W Coughlan  
Instructed by: Sohn and Wood Attorneys, Cape Town

For Defendant: Mr FS Goosen  
Instructed by: State Attorney, Cape Town