IN THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA DIVISION, (MBOMBELA MAIN SEAT)

Case No.: 5721/2023

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED **YES/NO**

DATE: 16 SEPTEMBER 2025

SIGNATURE

In the application between:

M[...] M[...]	**PLAINTIFF**
PASSPORT NUMBER: A[...]	
DOB: 1979/10/16	

And

ROAD ACCIDENT FUND	**DEFENDANT**

JUDGMENT

<u>NGWENYA AJ</u>

INTRODUCTION

[1] This is a claim for loss of support. The Plaintiff, M[...] M[...], a major female born 16 October 1979, claims for loss of support in her personal capacity as the surviving spouse and also in a representative capacity as the biological mother and legal guardian of the following minors:

1.1 L[...] T[...] N[...] (born 26 May 2008).

1.2 L[...] T[...] N[...] (born 17 August 2011).

1.3 M[...] N[...] (born 17 September 2019).

[2] In her particulars of claim in paragraphs 4 to 5.8, the Plaintiff alleges as follows:

"*A head-on motor vehicle accident occurred on 10 April 2021 at approximately 19h05 along the R38 Badplaas road Barberton, Mpumalanga a motor vehicle accident occurred between a motor vehicle with registration letters and numbers J[...], there and then driven by MG Kweis (hereinafter referred to as the "insured vehicle A"), and motor vehicle with registration letters and numbers C[...] driven by M N[...] (the deceased).*

The accident was caused by the negligence of the driver of insured vehicle "C" (a truck) who was at least 1% negligent in one or more or all of the following ways;

5.1 He drove in a manner that was not safe or responsible;

5.2 He failed to keep a proper look out;

5.3 He was driving at an exceedingly high speed under the circumstances;

5.4 He failed to control the vehicle properly;

5.5 He failed to apply brakes, alternatively, timeously apply brakes, alternatively, he was driving a vehicle of which the brakes were not properly functioning;

5.6 He failed to stop when by doing so he could/would have avoided the accident;

5.7 He failed to adhere to the road signs and drove the insured vehicle without any concern whatsoever for the rights and safety of other road users;

5.8 He did not drive with the due and requisite skill, diligence, consideration, carefulness, caution and/or circumspection to avoid the accident while a reasonable3 driver should have and would have avoided the accident under the circumstances."

THE TRIAL

[3] At the trial, oral and documentary evidence was led.

Oral evidence

[4] The Plaintiff testified as follows:

4.1 That she was married to the deceased in terms of customary law (customary laws of Zimbabwe).

4.2 That her late husband died on the 10th April 2021.

4.3 There were four children born out of the marriage. There are three minors and one major.

4.4 She is currently a housewife.

4.5 She worked from 2011 until December 2017. She and her husband worked for a forestry company. She was a supervisor and a First-aid officer. The reason for her to leave her employment was to look after the children in Zimbabwe.

4.6 Her late husband worked from 2005 until his demise.

4.7 The late husband would send R3000.00 to R4000.00 for food and school fees.

4.8 Without the R3000.00 to R4000.00, she and the children would suffer.

4.9 Her late husband earned R14,000.00 in December 2016, R9,000.00 in August 2017 and R10,000.00 in April 2018. This was her late husband's pay while he was working at the Forestry Company.

4.10 At the time of the accident, the late husband was self-employed, providing refrigeration services and gas filling. In addition, he sold sweets and fruits at a mini-market. He would send money through a money transfer system platform called mukuru.

[5] Under cross-examination, the following was put to her:

5.1 According to the lobola letter presented, lobola was not paid in full. She confirmed that a portion of the lobola was still outstanding as it was to be paid in instalments.

5.2 She was asked how she can confirm that the late husband was working with his friend, Mr Ngwenya. She confirmed that she knew her late husband and Mr Ngwenya were friends and worked in Sabie. She testified that the average income was R15 000.00.

5.3 She was further questioned about the instructions given to the Actuary. She said it wasn't her.

[6] In re-examination, the following issues were canvassed:

6.1 She was asked about the statement that lobola was not paid. She confirmed that the deceased still owed the family and that a celebration took place. However, she confirmed that it was still considered lobola in Zimbabwean customary law and that the agreement constituted a valid marriage.

[7] The next witness was Mr Ngwenya, a friend of the deceased. He testified as follows:

7.1 He and the deceased went to the same church.

7.2 They were doing air-conditioning and refrigeration services for the deceased.

7.3 The deceased had his own customers, but they shared ideas.

7.4 Income depended on the type of work that had to be done.

7.5 R15 000.00 was the average income each month.

7.6 He worked with the deceased until his demise in 2021.

[8] Under cross-examination, the following was put to Mr Ngwenya:

8.1 The nature of the business and the relationship with the deceased. Mr Ngwenya confirmed his earlier testimony that they would share ideas, and they were not business partners. For instance, when the deceased had a lot of clients, he would offer his services and vice versa.

8.2 He was asked for proof of the fees that were charged. He said he did not have invoices but had access to the deceased's invoice book. He confirmed that both of them had a target of R15 000.00 per month.

[9] Under re-examination, Mr Ngwenya confirmed that he regularly communicated with the deceased.

[10] The next witness for the Plaintiff was Mr Chinyanya, who testified about the accident and said the following:

10.1 He testified that there were five people in the vehicle when the accident occurred, and it was around 5:00 pm.

10.2 The deceased was overtaking a truck, which had given him the right of way by moving to the left side of the road. However, when the truck gave way, there was a blind rise in front.

10.3 The truck decided to come back to the right side of the road, forcing the deceased to face oncoming traffic. The deceased flashed his lights to indicate to the oncoming vehicles that they should reduce speed, but the oncoming vehicle did not heed the warning.

10.4 He testified that the deceased was driving 80km/h, but increased speed for the purpose of overtaking the truck. However, the truck driver came back on the road and forced the deceased to face oncoming traffic. He testified that the truck should have reduced speed, but he did not do so.

10.5 According to him, the truck driver was negligent. He further testified that the oncoming vehicle was driving at a high speed, on a blind rise.

[11] At the end of the Plaintiff's case, the Defendant applied for absolution from the instance on quantum.

[12] Counsel for the Defendant submitted that there were two calculations based on a payslip from previous employment and based on the informal work done by the deceased. Counsel stressed the point that at the time of the accident, the deceased was not working, and reliance cannot be based on the payslip.

[13] Counsel further submitted that R15 000.00 could not be proven as the witness who testified was not in a business venture with the deceased; they were running separate businesses.

[14] Counsel also submitted that the expert did not confirm the amendment of the calculations.

[15] In response, the Plaintiff's counsel said there was no objection to the handing in of the actuarial report. He further submitted that the payslip is proof that the deceased was a provider. Furthermore, he referred to customer affidavits proving income.

[16] In response, counsel for Defendant submitted that the witnesses only confirmed that the deceased was self-employed but could not prove the income and therefore R15 000.00 was not proven.

<u>Discussion and Analysis</u>

[17] On the question of whether the insured driver was negligent, the RAF did not call any witness to rebut the evidence led by the Plaintiff. Accordingly, I accept that the insured driver was negligent and caused the accident as alleged in the particulars of the claim and as established by the evidence led by the Plaintiff.

[18] The question of whether or not the Plaintiff proved its case on quantum became the most contentious issue.

[19] The Plaintiff presented two actuarial calculations, i.e. in line with the evidence presented in court, based on an income of R15 000.00 per month, and another calculation based on the income the deceased earned when he was employed at the

Forestry Company as a Supervisor and as reflected over the period 2016, 2017 and 2018.

[20] Counsel for the RAF argued that there can never be reliance on past income, meaning that I should not consider the payslips because when the accident happened, the deceased was no longer employed by the Forestry Company.

[21] The author of the 2021 edition of the quantum yearbook, Robert J. Koch, under general contingencies, notes two cases where actuarial calculations are based on the earnings from the victim's last known occupation, particularly when the victim is unemployed. I quote from the book:

> *"The unemployed victim:*
>
> *The actuarial calculations will usually be based on the earnings in the last known occupation. Deductions can be as high as 50% (see AA Mutual and Maqula 1978 (1) SA 805 (A)), but 35%, and even less, can be justified depending on employment history and occupation. In Gwaxula v RAF 2013 (SGH) unreported 25.09.2013 case 41896/2009) 30% was deducted.*

[22] In the circumstances, I accept the actuarial calculations based on the deceased's previous employment. If find that the income of the deceased based on his self-employment could not be proven. Accordingly, I rely on the actuarial calculations based on the previous employment.

[23] The actuary suggested contingencies of 5% for past loss for both the Plaintiff and the minor children, and 10% for future loss for the Plaintiff, with 5% for the minor children.

[24] I find that the contingency deductions suggested by the actuary are just and fair in the circumstances, as the unemployment of the deceased cannot be overly held against the Plaintiff. Considering the high rate of unemployment in the country, particularly among the skilled and uneducated, as well as the previous disadvantages faced by members of the population.

[25] In the circumstances, I make the following order:

1. The Defendant shall pay the Plaintiff the amount of R1 078 409.00.

2. Interest on the above amount at the rate of 15.5% per annum from a date 14 days after judgment and to the date of final payment.

3. The Defendant shall pay the Plaintiff's costs of suit in the High Court on the High Court party and party scale. Such costs shall include the fees and qualifying expenses of the actuarial expert Dr JJC Sauer.

4. The cost of preparation of the bundles as agreed upon on the pre-trial minutes.

5. The reasonable cost of Plaintiff's attorney, which includes travelling costs, attendance at court, costs for preparing for pre-trial conferences and formulation of pre-trial minutes and the cost for actual attendance at pre-trial conferences.

6. The Defendant shall pay interest on the Plaintiff's agreed taxed costs at the rate of 15.5% calculated from a date 14 days of the agreement or taxation to the date of final payment.

NGWENYA AJ

ACTING JUDGE OF HIGH COURT, MBOMBELA

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Date of hearing:	2 June 2025
Date of judgment:	16 September 2025