IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MTHATHA)

CASE NO: 1779/2016

In the matter between:

Z[...] J[...]	Plaintiff
and	
THE MEMBER OF EXECUTIVE COUNCIL FOR HEALTH, EASTERN CAPE	Defendant

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JUDGMENT

MAKAULA J:

A. Introduction.

[1] The deceased died on 27 July 2015 while giving birth to their last-born child, who is also a claimant. The plaintiff sued the defendant both in his personal and

representative capacity (on behalf of the children) for the negligent death of the deceased. The defendant was found liable by Dawood J for ‘(a) the death of Ms N[...] J[...]; and (b) … to pay the plaintiff all his proven or agreed damages in his personal and representative capacity.’ The matter came before me on quantum of damages.

[2] The plaintiff called the evidence of the plaintiff and the industrial psychologist, Ms Caren Swanepoel. The joint minutes of the industrial psychologists and clinical psychologists and the actuarial calculations were handed up by agreement between the parties. The defendant refrained from calling any witnesses.

[3] In the particulars of claim the plaintiff sued for the following heads of damages:

(a) Loss of support in respect of the plaintiff and his minor children in the amount of R3 000 000. 00 (three million rands).

(b) Personally, for emotional shock, trauma and post- traumatic disorder in the amount of R600 000. 00 (six hundred thousand rands).

(c) Funeral costs in the amount of R30 000.00(thirty thousand rands). However, it is worth mentioning at this stage that the plaintiff, in an unorthodox manner, in his heads of argument and in argument, argued that the defendant should be held liable for loss of support, which was never pleaded. I shall deal with this aspect later.

B. Facts.

[4] The plaintiff testified that he had five children with the deceased. The first was his stepdaughter, born of the deceased. They both had a calling and served in the Ministry as ministers of religion. They formed a church, which they named Well of Life Praise Centre (the church). The church operated in a guest house which they paid rent immediately after each church service, mostly on Sundays. He testified that things went smoothly when they ran the church with his wife. The number of congregants increased to about 100 members. They would be paid by offerings collected during the church service after disbursements. He estimated that he would receive a stipend of about R6 000.00 a month.

[5] His wife had a supplementary income. She sold Tupperware, Justin perfumes, and Avon and made an average income of about R10 000. 00 per month. Her income came in handy especially when things were tough. They would pay for

household necessities, and the children’s school fees. At the time, all the children attended private schools. The plaintiff unreservedly regarded his wife as the breadwinner of the family. He stated that life was much better with his wife present because they helped each other in running their growing family. They interchangeably performed household chores, church responsibilities and that gave him time to devote his efforts in the ministry. He was very productive, especially in his church responsibilities, with her assistance.

[6] With the demise of his wife, things changed for the worse. His life disintegrated, and he could not afford to run his home and church matters alone. He became helpless; he lacked motivation and energy to do things that he used to do effortlessly. He became depressed. He found himself not only to be a single parent but also to have the added responsibility of taking care of or nurture, not only four girls but also a newborn son. Being a single parent became demanding and burdensome to him as he did not want his children to be raised by extended family members. Because he was unable to afford a helper, it led him to be a full-time parent and thus forsaking his calling in the ministry. That led to the decline of the congregation dramatically to between 20 and 25 members. The plaintiff testified that things took a turn in his life in the year 2020. He could not afford to take the children to school after the first quarter. They dropped out of school thereafter until 2021. He could not carry on with the ministry either.

[7] The plaintiff was cross- examined at length about the business that his wife operated. He was asked about the amount of collections they had from the congregants on each church day. It became clear that there were no records to support the assertion that his wife had an income from the products she sold. There was no proof that she was employed in any of the companies he claimed she derived income from except a letter from Tupperware, signed by Ms M.N Kwinana whose designation is reflected as ‘Authorised Distributor of Tupperware Products”. The letter states that the deceased “started to sell Tupperware as an Independent contractor/ salesperson in June 2012 under this area. … Due to her hard work, she was promoted as a Manager in July of 2013 till her untimely death.’ The bank statement of the deceased’s Capitec account was discovered. The parties confirmed that the bank statement was not of assistance as there was no proof that she received remuneration from any of the companies she allegedly worked for. There are sporadic deposits, but they did

not assist for the purposes of this matter. The plaintiff further confirmed that they did not keep records of the money collected during church services, nor did he haveany proof that they received the amounts he claimed were his stipend because the money was neither deposited to his account nor recorded.

[8] Ms Swanepoel is an industrial psychologist whose expertise was not contested. She testified that the report was compiled by an industrial psychologist Ms T. Bonnema who used to work for her. However, she went through the report, satisfied herself that it was correct and co-signed it. Amongst the documents that she received were the matric certificates of both the plaintiff and the deceased, and the letter from Tupperware, referred to above. She consulted with the plaintiff when she was preparing an addendum to her report. She found that the information had not changed. It is noteworthy that the information regarding the deceased and the plaintiff she got from the latter is the same as his testimony before court and need no repetition hereof. Of relevance is how she arrived at her findings and recommendations. What is also more crucial is how she projected the limited information she got from the plaintiff to get to her findings.

[9] Ms Swanepoel, noted that the plaintiff had no supporting documents for his claim of how the deceased was a breadwinner and the amounts they both received from their respective sources of income. She noted that with no surprise because 'self- employed persons in the informal sector often do not keep financial records of their income.' Furthermore, regarding the collateral information, she stated as follows 'Collateral information in the form of bank statements of the deceased, as well as her employment documents were received. Due to the nature of employment of the claimant and the deceased, no additional collateral could be provided. The writer notes that self-employed individuals in the informal sector rarely keep comprehensive financial records,' In respect of the bank statement she noted as follows 'None of the credit transactions on the bank statements could be linked to a specific source, as these mostly relate to cash deposits and internal USSD transfers. It is therefore not possible to determine whether these amounts relate to earnings from Mrs J[...]'s various business ventures or not.' I have, above, referred to the letter from Tupperware and the nature of the bank statements that were furnished.

[10] Miss Swanepoel accepted both the deceased and the plaintiff's earnings at the time of the incident to compare between median and upper quartile (closer to the

median) of semi-skilled earnings as per Koch's (2015) and noted in Table1. However, the plaintiff's self-reported earnings after the death of the deceased were between lower, and median quartiles (closer to the lower) of semi- skilled earnings as per Koch's (2017) and noted in Table 1.

[11] An joint minute was prepared by Ms. Swanepoel and Mr. Hurdus van Pletzen, industrial psychologist, for the defendant. Their mandate was to give expert opinions on the loss of support suffered by the plaintiff and the children and the loss of earnings suffered by the plaintiff in his personal capacity due to the psychological and emotional shock caused by the death of the deceased. They disagreed in certain respects and highlighted such in their joint minute. I shall not traverse such disagreements for purposes hereof since that shall be apparent later. Suffice to state that the actuarial calculations relied on their joint minutes especially where their opinions converged. In respect of the loss of support, they both agreed that the plaintiff and the children's loss of support should be estimated by apportioning the profit that both the deceased and the plaintiff would have made among the family members during their respective periods of dependency.

[12] Both parties appointed clinical psychologists who later compiled a joint minute as well. Both clinical psychologists agreed on various aspects of his mental health due to the impact the loss had on him psychologically. They found that the death of the deceased precipitated his psychological disorders. Mr. van der Merwe, psychologist for the defendant, diagnosed the plaintiff with PTSD and Mr. Meyer diagnosed him with Persistent Complex Bereavement Disorder. They recommended that he must receive psychological treatment like psychotherapy and that quantum should allow for 25 sessions of individual psychotherapy as an outpatient and should award 12 sessions of family therapy, considering the extent to which the plaintiff psychological pain and suffering have affected his ability to fulfill his paternal role and the effect that this has had on his children. They both suggested that the costs of psychological therapy should be quantified at current medical rates and provision should be made for costs of psychiatric hospitalization if required for inpatient psychotherapy. They agreed that a long period of psychotherapeutic input and assistance for his family and his psychological status can improve, and he may be able to fulfill his occupational role again. Both agreed that the plaintiff has

experienced severe persistent emotional pain and suffering over a protracted period and needed to be duly compensated.

C. **Analysis**.

Loss of support.

[13] In his particulars of claim in respect of this head of damages, the plaintiff pleaded as follows:

'24

As a result of the death of the deceased through the negligence of the defendant as aforesaid, the six children and her husband lost the support of the deceased.

25

At the time of her death the deceased was employed as a sales lady at Tupperware Company and earning a monthly salary of R6 500.00(six thousand five hundred Rand) per month.

22

The estimated loss of support in respect of the plaintiff and her minor children from the date of the death of the deceased until the end of her working life amounts to a global sum of R3 000 000.00 (three million Rand).' (sic)

The defendant pleaded as follows in respect thereof:

'<u>Ad Paragraphs 23;24;24.1 to 24.5 inclusive</u>

9.1 In respect of what is pleaded in paragraph 23 of the claim, the defendant denies that the plaintiff and the minor children received support from the deceased prior to and at the time of the deceased's death.

9.2 In amplification of the aforementioned denial the defendant avers that the deceased was incapable of providing such support as she was unemployed and therefore had no source of income through which she could have been able to discharge her duty or obligation to support the plaintiff and the minor children.

…

AD PARAGRAPHS 25; 22; [second 23; [third] 23; [third] 24; 25

11.1 The defendant denies that the deceased was prior to and at the time of her death employed at Tupperware Company and earning the salary that is alleged herein or any amount at all.

11.2 Consequently the defendant puts plaintiff to proof of his applications herein.

11.3 The defendant does not admit the remainder of the allegations made in these paragraphs and accordingly puts the plaintiff to proof thereof." (sic)

[14] The defendant disputed that the deceased was employed by the companies as alleged by the plaintiff. That placed the onus on the plaintiff to prove that the deceased was employed. To establish that, the plaintiff discovered the letter from Tupperware. However, the letter does not sufficiently establish this fact. It may be so that she was in the employment of that company, however, it is silent on how she was remunerated. All it speaks to is that besides the trade discount, (which does not explain what it is and translated) she received a payout based on the sales. There is no proof of the 'Payout' that was once paid to her. That is despite the fact that she received a promotion based on her sales as stated before. The bank statements are not of assistance as there are no deposits reflecting that she received a salary or remuneration from any of the companies she allegedly worked for, let alone Tupperware. Even the cash deposits that appear on the deceased's statement do not even come closer to the amounts that the plaintiff alleged were received by her. There is not a single deposit that reflects the amount of R6000.00 as alleged by the plaintiff. It is doubtful that the deceased was making that kind of money from her employment with Tupperware. There is no proof that she was receiving money from selling other products as aforesaid.

[15] It is apparent that all the experts that were approached by both parties relied solely on the facts given to them by the plaintiff. There were no supporting documents, and this much has been confirmed by Ms. Swanepoel. The actuarial calculations were premised on the reports furnished especially by both industrial psychologists. With respect, as shown in the preceding paragraph, those figures are not supported by the evidence and should not have been relied upon by the psychologists, and by extension the Actuary as they are unverifiable. Admittedly the

letter from Tupperware does support the contention that she worked for the company, *albeit* falling short of how she was remunerated. The Actuary who did the calculation prefixed his report in all scenarios by stating that 'the information provided indicates that the spouse's career and earnings'. That supports my view that the actions relied on the information by both Industrial psychologists who in turn relied on the information furnished by the plaintiff. It has now become clear from the plaintiff's evidence that he had no proof of her earnings. The plaintiff therefore has failed to establish that the deceased was capable supporting them as a family, this claim has to fail.

***Loss of income earnings*.**

[16] This head of damages does not form part of the plaintiff's claim. It is only dealt with by the psychologists and obviously by the Actuary in their reports. The defendant did not deal with it in his particulars of claim except to highlight it in the heads of argument. I therefore cannot simply make order on an issue that is not before me and not dealt with by the parties on the papers.

Funeral Expenses.

[17] No case has been made out for this claim at all. The plaintiff did not testify about funeral expenses and no supporting documents were furnished. The claim stands to be dismissed.

General damages.

[18] It is without doubt that the plaintiff did suffer emotionally and psychologically because of the death of the deceased as well as that he now finds himself having to raise the children alone. The clinical psychologists of both parties in their joint reports agree that the way the deceased passed on was traumatic to plaintiff, and he is suffering from post-traumatic disorder. The pain and suffering he has been subjected to is palpable. He is left alone to raise the children, especially four girl children, under the circumstances postulated by the clinical expert reports and articulated by him in his evidence. All that remains is to determine the amount that would adequately address the damages.

[19] The parties have referred to numerous comparable judgments in their respective submissions regarding the amount to be awarded. It has become trite that such cases merely serve as a guide and are not binding on this court. The plaintiff

has suggested the amount claimed in the particulars of claim, while the defendant an amount of R490 000. 00. The amount claimed by the plaintiff is R600 000.00. I am of the view that that amount is reasonable in the circumstances.

Consequently, I make the following order:

1. The claims against the defendant in respect of loss of support, loss of earnings and funeral expenses are dismissed.

2. The defendant is held liable for general damages suffered by the plaintiff in the amount of R600 000. 00.

3. The defendant shall pay interest on the aforesaid amount at the prescribed legal rate of interest, calculated from 14 days after the date of this order.

4. The defendant is ordered to pay the plaintiff's costs of suit according to scale B with interest thereon at the prescribed legal rate payable 14 days after taxation to the date of payment.

5. The defendant is ordered to pay the plaintiff's costs of suit together with interest thereon at the prevailing prescribed legal rate from the date of taxation to date of payment, such costs to include the costs of two counsel, were so employed including the costs of –

   5.1 the traveling expenses, reservation and appearances fees, if any, together with the costs of the preparation of his report and consultations and the qualifying fees, if any, of the following expert-

   5.1.1 Ms Caren Swanepoel

6. The defendant is liable to pay plaintiff costs of suit on scale B.

M MAKAULA

JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff	:	Adv Brauns
Instructed by	:	**Z RENENE ATTORNEYS**
		34 Stanford Terrace Street
		MTHATHA
For the Defendant	:	Adv James
Instructed by:	:	**STATE ATTORNEYS**
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		Fortgale
		MTHATHA
Date heard	:	24 & 25 March 2025, 23 May 2025
Judgment delivered	:	23 September 2025