

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 763/2013

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE 2026/02/10 SIGNATURE. [REDACTED]

In the matter between:

EMMA TOMI**Plaintiff**

and

ROAD ACCIDENT FUND**Defendant**

JUDGMENT

BURNETT, AJ

INTRODUCTION

- [1] This is an application for default judgment against the Road Accident Fund in terms of Rule 31 (2) of the Uniform Rules of Court read with the Practice Directives of this division.
- [2] The merits have previously been finalised, and the matter was enrolled for determination of quantum only, and more specifically loss of support.
- [3] The necessary original documentation, i.e. a) combined summons; b) return of service; c) application for default judgment; d) notice of set down and e) merits court order, was properly filed with this court. There was proper service of the combined summons, application for default judgment and notice of set down on the Defendant. The court was satisfied that the matter was correctly enrolled and proceeded to hear the matter.
- [4] There was no appearance on behalf of Defendant.

APPLICATION IN TERMS OF RULE 38 (2)

- [5] At the start of the hearing, the Plaintiff brought a formal application in terms of Rule 38 (2) of the Uniform Rules of Court, in terms of which she sought for her evidence to be led by way of affidavit. Rule 38 (2) reads as follows: -

"The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where

it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.”

- [6] The original application was filed before the court. Having regard to the fact that the matter before the court is a default judgment application, and that it would be practical and convenient to hear the evidence of the Plaintiff, and her expert witnesses via affidavit, the court granted the application in terms of Rule 38 (2).

EXPERT EVIDENCE

- [7] The Plaintiff appointed two expert witnesses to give evidence in support of her claim, namely LL Langa, an Industrial Psychologist and N Waisburg, an actuary. The court is satisfied that both witnesses are in fact expert witnesses, and their evidence is accepted as such.

LOSS OF SUPPORT

- [8] The deceased was married to the Plaintiff and together they had four children, all of which were minors and financial dependents at the time that he was killed in the motor vehicle collision.
- [9] The deceased was an educator at the Department of Education who earned a gross salary of R 12 020.25 (twelve thousand twenty rand and twenty-five cents) and a net salary of R 9 478.38 (nine thousand four hundred and seventy-eight rand and thirty-eight cents). He was the breadwinner in the family.

[10] The deceased was 47 (forty-seven) years old at the time of his death. His highest level of education was a master's degree in mathematics.

[11] An actuary calculated the Plaintiff's (and the children's) loss of support on two scenarios, namely on a 7.5% contingency deduction and a 10% contingency deduction.

CONTINGENCY DEDUCTIONS

[12] A contingency deduction allows for the possibility that the Plaintiff may have less than normal expectations of life, and that he may experience periods of unemployment by reason of incapacity due to illness, accident, unrest or unstable economic conditions. The underlying rationale is that contingencies allow for general hazards of life.¹

[13] Having regard to the evidence before this court, the deceased has led a stable life personally as well as professionally insofar as his employment as a teacher is concerned. He was 47 years old, had a mathematics degree, and was employed in an important sector. There will always be a need for educators. There is nothing before this court insofar as the deceased's personal circumstances are concerned to suggest that anything major altering would have occurred in his life had it not been for his death. The deceased would probably have gone on to live a normal and stable life as an educator in a public school.

¹ *Van der Plaats v Southern African Mutual Fire and General Insurance Co* 1980 (3) SA 105 (A) page 114 – 115.

[14] It would however be prudent to apply a contingency deduction for the unpredictable hazards of life, which in this case, I deem a 10% (ten percent) contingency to be reasonable.

ORDER

[15] I accordingly make the following order: -

[15.1] The Defendant pays the Plaintiff an amount of R 3 096 328.00 (three million ninety-six thousand three hundred and twenty-eight rand) in respect of her loss of support claim in the above matter.

[15.2] The Defendant shall be liable for the Plaintiff's costs of suit on a party and party High Court Scale B.



BURNETT, E J
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: - ADV. MAKGOPA SEELE

INSTRUCTED BY: -

DATE OF HEARING: - 12 NOVEMBER 2025

DATE OF JUDGMENT: - 10 FEBRUARY 2026