


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Reportable: NO
Of interest to other Judges: NO
Revised: NO
Date: 03 June 2026 S.S Tebeile AJ
Signature: 

Case No: 2023-114386

In the matter between:

S.F.K	First Plaintiff
S.F.K OBO L.O.K	Second Plaintiff
S.F.K OBO M.K	Third Plaintiff

and

ROAD ACCIDENT FUND	Defendant
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Link Number: 5398068

Heard on : 19 March 2026
Decided on : 03 June 2026

JUDGMENT

TEBEILE AJ:

Introduction

- [1] This is an application for default judgment application in terms of Rule 31(2) of the Uniform Rules of Court. The first plaintiff, acting in her personal capacity and her representative capacity as the natural guardian of the second plaintiff (O.L.K, a minor female born 18 March 2014) and the third plaintiff (M.K., a minor male born 26 May 2020), claims damages for loss of support following the death of her husband, Mr B.S.M. (“the deceased”), in a motor vehicle collision that occurred on 26 July 2020.
- [2] The defendant, the Road Accident Fund, was duly served with combined summons on 13 November 2023. It failed to deliver a notice of intention to defend within the prescribed period and thereafter failed to deliver a plea or any other pleading. The plaintiffs have complied with all procedural requirements for default judgment, including serving a notice of intention to apply for default judgment.

Background

- [3] On 26 July 2020, on the R25 road in Kempton Park, Gauteng Province, the deceased was driving a Toyota Etios with registration J[...]GP when it collided with a truck with registration H[...]FS driven by Mr Mbele, the insured driver. The deceased sustained fatal injuries and died at the scene.
- [4] The evidence before me established that the first plaintiff and the deceased were married under customary law. The marriage was subsequently registered. The second and third plaintiffs are the biological children of the first plaintiff and the deceased.

- [5] According to the accident report compiled by Ms Dieketseng Makwala, a motor vehicle accident photographer employed by the Ekurhuleni Metropolitan Police Department, the collision occurred on the left slow lane, and there was loose sand on the road surface – an obstruction that required more careful driving. The insured driver admitted hearing a “loud bang” at the rear of his vehicle and seeing the deceased’s vehicle rolling in his rear-view mirror.
- [6] The deceased was the sole breadwinner for the family. He was employed by SBV Services (Pty) Ltd as an ATM Consultant, earning a basic monthly salary of R16 493.80 at the time of his death.

Liability

- [7] Section 17(1) of the Road Accident Fund Act 56 of 1996 (“the Act”) provides that the defendant is liable to compensate any person for loss suffered as a result of the death of a breadwinner caused by the negligent driving of a motor vehicle.
- [8] In cases of this nature, the onus is on the plaintiffs to establish at least some negligence on the part of the insured driver. The evidence from the police docket, particularly the statement of Ms Makwala, indicates that there was loose sand on the road –an obstruction – and that the collision occurred in the slow lane. The insured driver failed to keep a proper lookout and failed to avoid the collision. In my view, the accident was not solely caused by deceased.
- [9] In *A.D.C and Others v Road Accident Fund*¹ the Court stated:

“The plaintiffs are innocent third parties claiming loss of support. It is trite that no question of apportionment of fault or damages can be contributed to them. They only need to prove on a balance of probability the proverbial 1% negligence on the part of the insured driver/owner who is guilty of some negligence which was causally connected to the collision.”

¹ (2018/027323) [2023] ZAGPJHC 350 (18 April 2023) (Unreported).

It is not disputed that the deceased was travelling in the emergency lane and that he collided with an object in the road. The independent witness' evidence was clear and substantially satisfactory in material respects.”²

[10] In the circumstances, there being no evidence from the defendant to gainsay the plaintiffs' version, and no defence having been filed, I am satisfied that the insured driver was negligent in causing the collision. Based on the evidence before this court, it cannot be said that the deceased was solely to blame for the collision. The defendant is accordingly liable for 100% of the plaintiffs' proven damages.

Analysis of loss of support

[11] The plaintiffs obtained an actuarial report from Mr Robert Oketch of Ekhaya Risk Services, dated 20 July 2021. The actuary calculated loss of support under two scenarios: (i) the minor children becoming self-supporting at age 18; and (ii) the minor children becoming self-supporting at age 21. The calculations were as follows:

Plaintiff	Age 18 scenario	Age 21 scenario
First plaintiff (spouse)	R2 427 697.00	R2 343 397.00
Second plaintiff (daughter)	R724 225.00	R597 966.00
Third plaintiff (son)	R501 349.00	R802 234.00
Total	R3 653 271.00	R3 743 597.00

² Id paras 13-14.

[12] The plaintiffs claimed the higher of the two scenarios (age 21) totalling R3 743 597.00 plus R30 000.00 for funeral expenses (not in dispute), making a total claim of R3 773 597.00.

[13] The first plaintiff, as the surviving spouse, claims R2 343 397.00. The second plaintiff claims R597 966.00. The third plaintiff claims R802 234.00.

[14] While the actuarial report provides a useful starting point, the assessment of damages for loss of support remains a discretionary exercise by the court, having regard to all the circumstances, including contingencies and the inherent uncertainties of the future.³ I accept the actuary's calculations for the minor children (the second and third plaintiffs) as fair and reasonable. The deceased was their biological father, they were entirely dependent on him, and the duty of support for minor children extends at least until they become self-supporting, typically after completing tertiary education or attaining majority. The age 21 scenario is appropriate given that the deceased was young (29 years old at death) and would likely have supported his children through their studies. I therefore award the second plaintiff an amount of R597 966.00 and the third plaintiff an amount of R802 234.00, as claimed.

[15] However, the position of the first plaintiff (the surviving spouse) requires closer scrutiny. The first plaintiff was 27 years old at the date of the accident. She is young, healthy, and has a duty to take reasonable steps to mitigate her loss by seeking employment or improving her earning capacity. The actuarial report assumed that the first plaintiff was unemployed at the time of the accident, with no details of her income or earning potential. In *Mfomadi*⁴ the court said:

“On the other hand, he and his businesses may have fallen on hard times. Ill-health or injury may have dogged him; he may have been killed in a taxi-related violence (which is not far-fetched, given the notoriety of the industry in this regard). All these would cause loss of income or forced retirement. Therefore, a deduction should be made from the plaintiffs' claim to allow for general contingencies, some of which I have alluded

³ See *Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A)* (“*Bailey*”).

⁴ *Mfomadi and Another v Road Accident Fund* (34221/06) [2012] ZAGPPHC 152 (3 August 2012).

to above. All these factors, in my view, point to a higher contingency deduction, especially in respect of the first plaintiff. Having regard to all the factors, I conclude that a deduction of 40% from the first plaintiffs claim in respect of her loss would, in the circumstances, be fair and adequate to allow for general contingencies. It takes into account all of the above contingencies, and the fact that she received some income from an inherited asset, though on a very limited basis. It also balances out the inadequacy of the evidence with regard to the deceased's income.

I turn now to the second plaintiffs claim. In this regard compensation is for the loss of support from a parent who did in fact support, or was under an obligation to do so. (See *Groenewald v Snyders*, above at 247A-C. The principles governing the award of damages to the second plaintiff are not contested. It is common cause that the second plaintiff is entitled to damages only insofar as she has suffered actual pecuniary loss as a result of the wrongdoing of the insured driver (*see Evins v Shield Insurance Co. Ltd*). On a conspectus of all the facts, I am satisfied that the second plaintiff suffered actual pecuniary loss as result of the death of her father, and for that she is entitled to adequate and fair compensation.” (Emphasis added)

[16] Turning to the present case, for a young, able-bodied surviving spouse, a higher contingency deduction is warranted to account for the realistic possibility of remarriage, re-employment, or other changes in circumstances.

[17] The actuarial report applied a 15% contingency deduction for future loss. In my view, given the first plaintiff’s age (now 33), her apparent ability to work (no evidence of disability), and the fact that she has been the sole provider since the deceased’s death (as stated in the founding affidavit), a further reduction is justified. The first plaintiff has already demonstrated that she can support herself and her children, at least partially. It is speculative to assume she would have remained entirely dependent on the deceased for her entire life.

[18] Having regard to the principles in *Bailey* and *Mfomadi*, I consider it just and equitable to make a further reduction of 20% from R2 343 397.00 to account for the said contingencies. Consequently, the first plaintiff is to be awarded the amount as recalculated as follows:

R2 343 397.00

Less 20% (R468 679.00)

Total loss of support: R1 874 718.00

[19] The amount of R1 874 718.00 represents an effective additional contingency deduction of approximately 20% on top of the actuarial contingencies – a reasonable allowance for the vicissitudes of life, including the first plaintiff's own earning capacity and the possibility of remarriage. The funeral expenses of R30 000.00 are reasonable and are awarded in full.

Costs


[20] The plaintiffs have been substantially successful. The general rule is that costs follow the result. The defendant is liable for the plaintiffs' party-and-party costs on scale B. A contingency fee agreement has been disclosed, and the court notes its validity.

Order

[21] Accordingly, I make the following order:

- (1) The defendant is declared liable for 100% of the plaintiffs' proven damages arising from the motor vehicle collision on 26 July 2020.
- (2) The defendant shall pay to the first plaintiff (in her personal capacity) an amount of R1 874 718.00 (One Million Eight Hundred Seventy Four Thousand Seven Hundred Eighteen Rand) in respect of loss of support.
- (3) The defendant shall pay to the second plaintiff (O.L.K) an amount of R597 966.00 (Five Hundred and Ninety-Seven Thousand Nine Hundred and Sixty Six Rand) in respect of loss of support.

- (4) The defendant shall pay to the third plaintiff (M.K) an amount of R802 234.00 (Eight Hundred and Two Thousand Two Hundred and Thirty Four Rands) in respect of loss of support.
- (5) The defendant shall pay to the first plaintiff (in her representative capacity) an amount of R30 000.00 (Thirty Thousand Rand) in respect of funeral expenses.
- (6) The defendant shall pay interest on the amounts in paragraphs 2, 3, 4 and 5 at the rate of 10.25% per annum, calculated from 13 November 2023 to the date of final payment, but only if such payment is not made within 180 days from the date of this order.
- (7) The defendant shall pay the plaintiffs' party-and-party costs on scale B, including the costs of counsel, the preparation fees of the actuarial expert, and the costs of heads of argument. Such costs shall be paid within 14 days of taxation or agreed settlement, failing which interest shall accrue at 10.25% per annum.
- (8) Payment of all capital amounts and costs shall be made into the trust account of the plaintiffs' attorneys, Molala Attorneys.
- (9) The contingency fee agreement between the first plaintiff and her attorneys is confirmed as valid and enforceable.



SHADRACK TEBEILE
Acting Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

For the Plaintiff:

Adv C.C Ascar instructed by Molala Attorneys

For the Defendant:

No appearance