



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: ✓

Date: **3<sup>rd</sup> AUGUST 2017** Signature: \_\_\_\_\_

**CASE NO: 2014/42370**

**DATE: 3<sup>rd</sup> AUGUST 2017**

In the matter between:

**MASANGO: LINDA**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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**JUDGMENT**

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**ADAMS J:**

- [1]. In this action the plaintiff claims from the defendant, the Road Accident Fund (*'the Fund'*), loss of support arising from the death of his wife as a result of personal injuries sustained by her in a motor vehicle collision on the 25<sup>th</sup> June 2011 near Greylingstad. The claim is brought in terms of the provisions of the Road Accident Fund Act number: 56 of 1996, as amended (*'the Act'*).
- [2]. Prior to the commencement of the trial of this matter, the issue of the merits / negligence / liability was resolved on the basis of a full concession of liability by the Fund in favour of the plaintiff. In other words, the Fund accepted liability for all of the damages (if any) suffered by the plaintiff as a result of the death of his wife. This means that the only issue which I was required to adjudicate is the quantum of the plaintiff's damages, which enquiry, in my judgment, is not always limited to a mere calculation, but could also — unless admitted by the defendant — include matters relevant to the existence of patrimonial loss or damage. Since an essential feature of the plaintiff's dependant's action is his right to support by the deceased, a failure to prove a duty of support would mean a failure to prove patrimonial loss requiring compensation. The existence of a legal duty and concomitant right to support are therefore inextricably bound up with the question of damages, as the term is understood in the context of a separation of issues for trial. In conceding the merits the Fund did not, given the ordinary meaning of the term in this context, concede that the plaintiff had suffered patrimonial loss, and accordingly matters pertaining to the deceased's duty of support remained in issue despite the Fund's concession. [See: *Road Accident Fund v Krawa*, 2012 (2) SA 346 (ECG)]
- [3]. The very crisp issue in this matter is this: having regard to the facts, did the deceased have a duty during her lifetime to provide support to the

plaintiff? The converse of this is whether plaintiff has a right to a claim for loss of support in his personal capacity. It is worthy of note that the plaintiff also lodged a claim for loss of support on behalf of his minor child, which claim has already been settled by the Fund.

- [4]. Most of the facts in this matter are common cause and can be summarised as follows. At the time of her death, the deceased was the sole breadwinner of the family, consisting of the plaintiff, who was born on the 17<sup>th</sup> September 1982, the deceased and their child, who was born on the 21<sup>st</sup> February 2011. The deceased was earning R78 000 per annum at the time of her death. The plaintiff was unemployed then, he having resigned from his previous occupation as a *'Back Office Engineer / General Assistant'*, earning approximately R19 000 per month, therefore about R228 000 per annum. In his occupation he was involved in data base management and storage. He was therefore employed in the information technology (*'IT'*) industry in what appears to have been a very lucrative and well-paying position. He voluntarily resigned from his previous position because his working hours were an inconvenience to his family and caused security concerns for him and his wife, who was pregnant at the time. It was in fact his wife who asked him to quit his employment so as to enable him to be at home more and to look after the child after his birth. I interpret the foregoing as the plaintiff having had, as at the date of the death of his wife, the capacity to earn an income of approximately R228 000 per year.
- [5]. Shortly after the death of his wife, the plaintiff, who is 34 years old at present, was able to find employment during July 2011 at a salary of R19 000 per month. He had signed an employment contract, and was supposed to commence working on the 1<sup>st</sup> of July 2011, but was unable to take up the employment, because, as he puts it, he had to take care of his son, who was three months old at the time of the death of his wife. Under

cross – examination the plaintiff elaborated on the reasons why he did not take up the employment during July 2017. It transpired that he was also involved in the accident in which his wife was killed, and he suffered minor physical injuries, which, according to the plaintiff, resulted in psychological difficulties. He did not claim any damages from the Fund arising from his own injuries, although he explained that part of the problem post – accident was *'his state of mind'*. On a direct question relating to the reason why he was unable to earn a living after the accident, he explained again that that was because he had to look after his son. Later on during cross examination the plaintiff, quite surprisingly, testified that after the accident he could not work because of *'memory loss'*. All the same, the plaintiff has been unemployed since the death of his wife. He has not been able to obtain any other employment since July 2011 despite his endeavours to that end.

- [6]. It requires emphasising that at all times material the plaintiff had the capacity to earn substantially more than his wife did at the time of her death, and, up to about six months prior to her death he had been in fulltime employment earning substantially more than the R78 000 earned by his wife. However, by choice he opted to be a stay at home dad and husband. The question is how this fact impacts on the alleged legal duty his wife had to support him. Factually, he was not earning any income when his wife died and factually she was probably supporting him. Does this mean that he has the right to claim loss of support?
  
- [7]. The plaintiff's alleged loss of support has been actuarially calculated on the basis that his wife was earning R78 000 per annum at the time of her death and that the plaintiff's income was nil. It is also assumed that, but for her death, the plaintiff's wife would have supported him until her retirement at age 65 and that the plaintiff would not have worked one single day of his remaining life to earn an income of his own. The calculations come to

R791 445. The computation of the claim for support as set out in the actuarial report of Mr Whittaker is based on a number of factual statements and / or assumptions made in this report, which to me do not appear to be in accordance with the facts as established in the course of evidence and the probabilities in the matter, most notably the assumption that the plaintiff would not have worked one day in his life and that he would have been supported by his wife until her retirement at age 60. In that regard, it is instructive to note that the plaintiff, according to his evidence, was to commence employment at a new company on the 1<sup>st</sup> of July 2011, mere days after the death of his wife. From this it can safely be inferred that the plaintiff, even before the death of his wife, had every intention of returning to work as early as the 1<sup>st</sup> of July 2011. Because of his state of mind resulting from his own injuries and the fact that he had to look after his child, he did not take up this employment opportunity.

[8]. Mr Khan, Counsel for the plaintiff, conceded, rightly so in my view, that the premises on which these calculations are based cannot possibly be correct. He did however submit that the plaintiff did suffer a loss of support as a result of the death of his wife. The fact of the matter, so it was argued on behalf of the plaintiff, is that on the death of his wife, the plaintiff had been deprived of his share of the income his wife was earning at the time. I was accordingly urged to quantify the loss on the basis of a limited period, even though factually the plaintiff has not been able to find employment for the last six years since his wife died.

[9]. The law imposes a duty upon one person to support another when three requirements are satisfied:

(a). The person claiming support must be unable to support himself;

- (b). The person from whom support is claimed must be able to support the claimant; and
- (c) The relationship between the parties must be such as to create a legal duty of support between them.

[10]. In other words, whether there was a need by one person for financial support and a concomitant duty on another to provide it in a given case depends on the facts, notably whether there existed a relationship between the claimant and the deceased which would give rise in law to a duty of support and whether, in the context of any such duty, there was a need at the relevant time for support to be provided (cf *Neethling et al: Law of Delict* 6 ed at 279 sv '*Requirements for a Claim of Loss of Support*').

[11]. The plaintiff was married to his wife by customary union and they lived together as husband and wife for approximately 2 years up to the time of her death. One child was born of the marriage. At the time of her death the plaintiff's wife was in full time employment with Bombela, earning R6500 per month, which translated into R78 000 per annum. The last two requirements which give rise to a legal duty of support have clearly been complied with. The difficulty with plaintiff's claim, in my view, lies with the first requirement, that being the prerequisite that the plaintiff, as the person claiming support, must have been unable to support himself at the relevant time, that being as and at the date of the death of his wife. This requirement is also referred to as the requirement of a '*need for support*'.

[12]. The important question which I need to answer is whether the factual support given to the plaintiff by his wife at the time of her death translates

into a legal duty of support, entitling him to claim loss of support from the Fund.

[13]. As noted, the evidence was that plaintiff was reliant on the financial support of his late wife at the date of her death. This was so not because of a need he had or an inability to support himself, but by choice. He himself had the capacity to earn more than what his wife earned.

[14]. Applying these legal principles to this matter, and having regard to the fact that, on plaintiff's own version, he had the ability to earn an income to support himself, I am of the view that his wife did not owe him a legal duty of support. The plaintiff has, in my view, failed to prove that he had a right to support by the deceased in that he has failed to prove a duty of support. This means a failure on the part of the plaintiff to prove patrimonial loss requiring compensation.

[15]. Therefore, on the basis of the facts, plaintiff's claim stands to be dismissed.

[16]. Another way of viewing this matter is to regard it as question of causation, more particularly '*legal causation*', as was done by the full court in *Hing and Others v Road Accident Fund*, 2014 (3) SA 350 (WCC). Legal causation as a requirement serves as a moderating tool to regulate a defendant's liability so as to keep it within bounds which legal policy would consider reasonable. Corbett CJ explained the nature and role of legal causation in *International Shipping Co (Pty) Ltd v Bentley*, 1990 (1) SA 680 (A) at 700E – 701G as follows: D

*'As has previously been pointed out by this Court, in the law of delict causation involves two distinct enquiries. The first is a factual one and*

*relates to the question as to whether the defendant's wrongful act was a cause of the plaintiff's loss. This has been referred to as factual causation. The enquiry as to factual causation is generally conducted by applying the so-called but-for test, which is designed to determine whether a postulated cause can be identified as a causa sine qua non of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; aliter, if it would not so have ensued. If the wrongful act is shown in this way not to be a causa sine qua non of the loss suffered, then no legal liability can arise. On the other hand, demonstration that the wrongful act was a causa sine qua non of the loss does not necessarily result in legal liability. The second enquiry then arises, viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part. This is sometimes called legal causation. (See generally Minister of Police v Skosana, 1977 (1) SA 31 (A), at 34E – 35A, 43E – 44B; Standard Bank of South Africa Ltd v Coetsee, 1981 (1) SA 1131 (A), at 1138H – 1139C; S v Daniëls en 'n Ander, 1983 (3) SA 275 (A), at 331B – 332A; Siman & Co (Pty) Ltd v Barclays National Bank Ltd, 1984 (2) SA 888 (A) I at 914F – 915H; S v Mokgethi en Andere, a recent and hitherto unreported judgment of this Court, pp 18 – 24.).*

[17]. *Fleming, The Law of Torts, 7th ed at 173* sums up this second enquiry as follows:

*'The second problem involves the question whether, or to what extent, the defendant should have to answer for the consequences which his conduct has actually helped to produce. As a matter of*



*practical politics, some limitation must be placed upon legal responsibility, because the consequences of an act theoretically stretch into infinity. There must be a reasonable connection between the harm threatened and the harm done. This inquiry, unlike the first, presents a much larger area of choice in which legal policy and accepted value judgments must be the final arbiter of what balance to strike between the claim to full reparation for the loss suffered by an innocent victim of another's culpable conduct and the excessive burden that would be imposed on human activity if a wrongdoer were held to answer for all the consequences of his default.'*

[18]. As observed in 8(1) LAWSA 2 ed para 132: A

*'In essence, therefore, the question of legal causation is not a logical concept concerned with causation but a moral reaction, involving a value judgment and applying common sense, aimed at assessing whether the result can fairly be said to be imputable to the defendant.'*

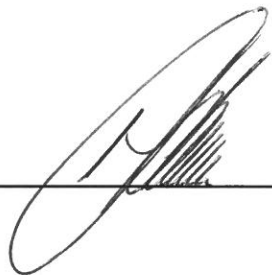
[19]. In the current case the need for the support the plaintiff alleges he would have received from his wife arose not out of necessity but due to a choice to resign from his employment exercised by the plaintiff six month prior his wife's death. It therefore arose in the context of a prior event, which was entirely unconnected to any wrongdoing by the insured driver. The anecdotal evidence suggests that the plaintiff's inability after the death of his wife to obtain replacement employment was due to factors unrelated to this case, such as *'his state of mind'*, the fact that he had to look after his child and attained a criminal record in the interim, in addition to the very important fact that he had opted to resign from fulltime employment six month prior to the death of his wife. In these circumstances, my value judgment is that the plaintiff's loss cannot fairly be said to be imputable to the defendant.

[20]. Therefore on the basis of the legal principles relative to legal causation, the plaintiff's claim stands to be dismissed.

**ORDER**

In the result, I make the following order:-

The plaintiff's claim is dismissed with costs.



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**L ADAMS**

*Judge of the High Court  
Gauteng Local Division, Johannesburg*

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HEARD ON:	11 <sup>th</sup> May 2017
JUDGMENT DATE:	3 <sup>rd</sup> August 2017
FOR THE PLAINTIFF:	Adv Z Khan
INSTRUCTED BY:	R A Seedat Attorneys
FOR THE DEFENDANT:	Adv Nkondo
INSTRUCTED BY:	Z & Z Ngogodo Attorneys