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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE: 8/11/2016

CASE NO: 49256/2013

In the matter between:

N. G. M.

FIRST PLAINTIFF

N. G. M. obo T. M.

SECOND PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

TWALA AJ

[1] The plaintiff sued the defendant in her personal capacity and in her representative capacity as mother and natural guardian for her minor child, T. M. (T.), for damages arising out of a motor vehicle accident that occurred on the 21 September 2011 in Benoni wherein the Late A. M. (M.) died.

[2] The issue of liability was settled between the parties and made an order of Court on the 15 June 2015 when the defendant conceded that it was 100% liable to pay the

plaintiffs' proven damages.

[3] At the commencement of the trial of this matter, the damages for the minor child, T., were settled in the amount of R44 023.00.

[4] What remained a triable issue between the parties was the quantum of damages suffered by the plaintiff personally as a result of the death of M.. The question that needs to be answered is whether M. had a duty or legal obligation to support the plaintiff.

[5] Counsel for the plaintiff brought it to the attention of the Court that the defendant is raising a new issue in that the duty to support the plaintiff by M. was never placed in dispute earlier in this case. The merits were settled 100% in favour of both plaintiffs and no such issue was raised in pre-trial meetings that have been held between the parties. As a result the plaintiff should succeed in her claim based on admissions that have been made in the pre-trial meetings. There is no application before this Court to amend or withdraw the admissions made in the pre-trial meetings.

[6] It is the defendant's counsel's contention that the concession on the merits was a confirmation that the accident happened in the manner as described. However, the plaintiff still has to prove that M. supported her and that he was duty bound to do so. The issue may not have been raised in the pre-trial meetings but it is pertinent in the determination of the quantum of damages in this case.

[7] It is trite law that a trial is not a game where one party is allowed to take advantage of the mistakes of the other. The presiding officer's position is not merely that of an umpire to see that the rules of the game are observed by both sides. The presiding officer is the administrator of justice, he is not merely a figure head, he has not only to direct and control the proceedings according to recognised rules of procedure but to see that justice is done. *In this regard, see R v HEPWORTH 1928 AD 265 at 277.*

[8] I agree with counsel for the defendant that, although certain admissions were made in the pre-trial meetings held by the parties, the issue of the duty or obligation to support the plaintiff by M. is pertinent in this case and therefore need to be determined by the Court. As stated in the Hepworth case referred to above, the duty of this Court is to see to the administration of justice and that justice is done.

[9] In the circumstances, I allowed the trial to proceed on the issue of whether M. has a duty or obligation to support the plaintiff.

[10] The plaintiff testified that she is unemployed but she is renting two back rooms in Daveyton, Benoni. She met M. in 2003 and a love relationship developed between them as a result whereof a child, T., was born in 2004. At the time she has been living with her parents and M. was also living at his parents' home.

[11] M. was a taxi driver and his employer was known as Rambo. He started to maintain her and T. after T. was born in 2004. He has on many occasions expressed his love for her and that he wanted to marry her. In 2010 M. rented a two roomed house and invited her to come and live with him. She left T. at her parental home when she joined M. at his new residence.

[12] M. continued to maintain her and T. as they lived together and she would also do the house chores as the wife does for her husband. She was working part-time and earning R1 200 per month. M. would buy her clothes, groceries and pay for her medical expenses including that of T.. She knew that M. had a wife and children.

[13] Under cross examination she testified that M. informed her that he was earning R750 per week. She would use her money to augment groceries should they be running short during the course of the month. At the beginning of the relationship she knew that she was a girlfriend of M. but he told her that his relationship with his wife became sour -

hence he promised to marry her. He said this on numerous occasions. She conceded that she was employed by her sister to look after her children and earns R1 000 per month. She testified that she cannot survive with her salary alone since she used to live with M. who was looking after her. She has a cash shortfall every month. M. maintained and supported her and her child, T..

[14] The plaintiff then closed its case. The defendant did not have any witnesses to call and therefore closed its case as well.

[15] The plaintiff gave her evidence clearly, unambiguous and did not change under cross examination. There is only one version before this Court and that is the version of the plaintiff. I am satisfied with the evidence of the plaintiff and accept it as the truth.

[16] Society still has some reservations about people living together as husband and wife without going through the formalities of marriage. It is easily accepted by society and the law that the existence of a marriage relationship between two people brings into existence the obligation or duty to support upon the parties. However, in the changing circumstances of today, it is not uncommon for a couple to live together as man and wife without concluding or committing to a marriage relationship. It therefore, cannot be said that the obligation and duty to support only arises or comes into extent when a marriage is concluded or if the claimant is a member of the family or is a dependant of the deceased.

[17] The plaintiff testified that M. has on numerous occasions intimated that he will marry her. It is further the uncontested evidence of the plaintiff that M. would give her money to buy household goods and she would do the house chores like a wife does for her husband. She would augment groceries with her own money should the need arise during the course of the month. However, this on its own does not attract any legal obligation to

marry on the part of M.. What needs to be considered is whether or not the nature of the relationship between the plaintiff and M. gave rise to a reciprocal duty of support.

[18] I disagree with Counsel for the defendant that the relationship between the plaintiff and M. was akin to that of a husband who was cheating on his wife. The undisputed evidence before this Court is that the plaintiff met M. in 2003, a child was born in 2004 between them and they moved in to live together in 2010. They lived together as husband and wife until the M. met his untimely death in September 2011. There is no evidence to dispute this version of the plaintiff. It is purely speculation on the part of the defendant to suggest otherwise.

[19] In the case of **MARIA ANGELINA PAIXAO & ANOTHER v ROAD ACCIDENT FUND (640/2011) [2012] ZASCA 130 (26 SEPTEMBER**

2012), the Supreme Court of Appeal stated the following:

" The difficulty I have with the defendant's submission is that extending the protection of the dependants' action only to permanent heterosexual relationships where there is agreement to marry requires us to draw an arbitrary line between those relationships and most others where there is no such agreement. The proper question to ask is whether the facts establish a legally enforceable duty of support arising out of a relationship akin to marriage. Evidence that the parties intended to marry may be relevant to determining whether a duty of support exists, as in this case. But it does not mean that there must be an agreement to marry before the duty is established. And once a dependant establishes the duty, the law ought to protect it."

[20] The Supreme Court of Appeal continued in the case of **Paixao** to state the following:

"By coming to the above conclusion I do not intend to demean the value or importance that our society places on marriage as an institution as the high court feared. On the contrary, I am extending the protection afforded to the dependants of the deceased precisely because the nature of their relationship is similar to a family *relationship arising from a legally recognised marriage*. I therefore hold that the dependants' action is to be extended to unmarried persons in heterosexual relationships who have established a contractual reciprocal duty of support."

[21] In my view, the evidence before this Court demonstrates that the relationship between the plaintiff and M. is similar to that of a family relationship arising from a legally recognised marriage. Plaintiff's uncontested evidence is that M. would give her money to buy groceries and should they run short of groceries during the course of the month, she would use her money to augment the groceries. That in my view establishes a tacit reciprocal duty to support between the parties.

[22] In its particulars of claim to the summons, the plaintiffs claimed a global amount of R385 000 for both. However, after having settled the claim for T. and having lead the evidence of the plaintiff, the plaintiff secured an actuarial calculation for the loss of support she has suffered as a result of the death of M.. I had the privilege to peruse the actuarial report and have come to the conclusion that the figure of R90 000 as proven damages for the plaintiff is reasonable and justified in circumstances of this case.

[23] I am not persuaded by the argument of the plaintiffs' counsel that the Court should mulct the defendant with a punitive costs order due to the manner in which the defendant handled this matter.

[24] The plaintiffs initially claimed an exorbitant sum of R385 000 and the final amount of

proven damages is a sum of R134 023 which is less than half the amount initially claimed. In my view, the defendant was not dilatory in its handling of this matter. There was no deliberate intent on the part of the defendant to delay the finalisation of this matter.

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

A. The defendant is liable to pay the plaintiffs a sum of R134 023.00 within fourteen (14) days from the date of this order;

B. Interest on the sum of R134 023 calculated at the applicable rate from the date of summons to date of payment.

C. Costs of suite including the costs of the attended experts.

TWALA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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Date of Hearing: **19 SEPTEMBER 2016**

Date of Judgment: **08 NOVEMBER 2016**