

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No:66910/2017

Date 17/9/2019

F[...] H[....] obo L[...] & M[...]

PLAINTIFF

V

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

NEUKIRCHER J

1. On 26 November 2016 at 07h50 in Hendrik Potgieter Drive, Roodepoort, the plaintiff's husband (and father of the two minor children, L[...] and M[.]) was killed when his bicycle was involved in a collision with the insured driver's motor vehicle.

2. The plaintiff instituted action against the defendant for herself and for her two minor children, *inter alia*, for loss of support. The merits being settled 100% in plaintiffs favour, this trial proceeds on the issue of loss of support only.

3. In fact, at the commencement of the matter, the only true issue put before me was the question of whether the minor children would become financially independent at the ages of 21 or 25 years.

4. The defendant conceded that the facts were common cause and as the defendant had no expert reports other than that of its own actuary, the parties agreed that the matter would be argued on the plaintiff's expert reports as they stood.

5. Mr Avvakoumides (for plaintiff) then argued plaintiff's case on this basis. Suddenly, at the end of Mr Skhosana's (defendant counsel) argument, he placed in dispute the basis of plaintiff's actuarial calculation.

6. The issue, which was not raised at the onset of the trial, or the outset of argument on behalf of defendant, was the following:

6.1 Mr Kramer¹ states in his report:

"Mrs F[...] has been unemployed since the accident date. It has been assumed that she would not have been employed had the accident not occurred."

6.2 Mr Jacobson² states in his report:

"Mrs F[...] is currently employed by Stratsource Recruitment. I have been instructed to assume that she was employed in this capacity at the time of the accident. Based on a bank statement for the period February 2019 until August 2019, I have taken her average earnings as R1 850 per month (assumed in February 2019 money terms). I have assumed that Mrs F[...] will continue working in this same capacity, receiving annual inflationary increases until retirement at age 65."

7. Of course, this then led to an irreconcilable dispute which could not be decided on the reports.

8. Given the tremendous waste of time and money that would have resulted from a postponement of the matter, Mr Avvakoumides (with the consent of Mr Skhosana) and leave of the Court, called plaintiff on this narrow issue.

Mrs F[...]

9. Her evidence was that she works as a non-executive director in her sister's company, Stratsource Recruitment. She provides an ad-hoc service when asked and she's been doing this since her sister started the company in the past 10 years. It is, however, only for the past +- 5 years that she has been paid.

10. Her bank statement (which was discovered³) reveals the following payments from Stratsource for the period 3 February 2019 - 2 August 2019:

18 February 2019	R2500
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1 April 2019	R1 000
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¹ Plaintiff's actuary

² Defendant's actuary

2 May 2019	R1 600
30 May 2019	R1000
26 June 2019	R1 000
12 July 2019	R4000

11. Given that Mr Jacobson uses this to calculate the loss of income, this then was proof that plaintiff was earning an income, (*albeit* ad hoc) and Mr Kramer's assertion that she is unemployable is incorrect⁴ .

12. Given this, and with both counsel's assent I ordered that both actuaries⁵ were to file updated reports by Monday and that unless I was notified otherwise by 10h00 on Wednesday, I would assume that neither party wished to argue any further issue arising from either of the updated reports.

13. The updated reports were duly filed and no objection from either party was received.

14. I will deal with the reports in the actuaries in due course. For now, I turn to the agreed facts.

The Educational Psychologist: Nina du Plessis

15. Given that the only real issue was at what age the minor children would become self-supporting, the report of the educational psychologist (du Plessis) was the only one which bore relevance.

16. Du Plessis recorded that, at the date of the accident L[...] was 15 years and 10 months old and M[...] was 13 years and 11 months old.

L[...]

17. Du Plessis stated that he presented with a preference for technical and numerical sciences and had introverted personality style. She then states that the tests conducted revealed that:

- *"L[...] has a gifted intelligence and that his aptitude may lie more in the field of natural sciences and with this level of intelligence, Luc should consider furthering his studies at an academic university .. .*
- *The following career options were recommended for Luc:*

³ Updated Bundle B2 p 86

⁴ This forms the basis of his assumption that she has not, and will not, receive an income

⁵ Defendant's actuary to update his report September with a new calculation which excludes the 5 % deduction in respect of the counting applied to plaintiff's remarriage"

- *Engineering:*

(i) *Mechanical*

(ii) *Electrical*

(iii) *Electronic*

(iv) *Computer*

- *BSc (Computer Sciences)*

- *BIT (Information Technology)"*

18. She also opines:

- *"L[...] should pass Grade 12 with sufficient marks to obtain entrance into university with the option of studying a desired Degree (NQF Level 7) (i.e. Approximately age 21⁶ for a 3 year under-graduate degree). He should additionally be able to pursue any of the recommended careers from the Vocational Guidance Report.*

- *Depending on the choice of degree the possibility of furthering his studies at a post-graduate level, such as an Honours and Master's Degree (NQF Level 8 and 9) cannot be excluded (i.e. approximately age 25 or 26 - taking into consideration the possibility of community service depending on the nature of his chosen career / degree).*

M[...]

19. According to du Plessis the tests revealed that:

- *"M[...] presented with a preference for natural sciences, technical and numerical sciences ...*

- *M[...] has a strong intelligence and that her aptitude may lie more in the field of natural sciences and with this level of intelligence, M[...] should consider furthering her studies at an academic university ...*

- *It was further recommended that she takes Mathematics, Physical Science, Life Sciences and Accounting with AP Maths as an extra subject.*

- *The following career options were recommended:*

-Medicine (Specialization)

-BSc (Biological Sciences)

-BSc (Microbiology / Genetics)

- BSc (Forensic Sciences)

-Occupational Therapy"

20. Based on these two scenarios⁷ Mr Kramer brought out his first report dated 29 August 2019. I point out that his initial figures also exclude the plaintiff's R1 850 monthly income (but it is necessary to illustrate these to demonstrate a later point). Mr Kramer's calculation⁸ is that:

20.1 Basis A- age 21

The total loss of support is R 4 454 651 (where prior to the applied limit the total loss is R11 328 391)

20.2 Basis B - age 25

The total loss of support is R4 454 651 (where prior to the applied limit the total loss is R12 124 936)

21. If the plaintiffs income of R1850 is taken into account⁹ the loss of income is:

21.1 Basis A- age 21

R 4 454 649 (where the value prior to the limit is R11 223 984)

21.2 Basis B - _age 25

R 4 454 648 (where the value is R12 030 220 prior to the limit)

22. The difference between the two scenarios (i.e. including / excluding plaintiff income) is negligible but that is not the point - the point is that plaintiff is not entitled to be compensated more than what is actually due and proven.

23. Mr Jacobson's calculations only take into account the scenario where both children would become independent at the age of 21. What is also important is that despite this, his calculation is very different to that of Mr Kramer: Mr Jacobson postulates that pre-limit, the value of the loss of earnings is RB 379 161 and applying the limit the claim then reduces that to R3 447 488.

⁶ This is common cause

⁷ i.e. Scenario 1 = age 21 Scenario 2. = age 25

⁸ Which includes the relevant limits and excludes a remarriage contingency which was declared unconstitutional by Tolmay Jin Esterhuizen v Road Accident Fund (26180/2014) [2016] ZAGPPHC 1221; 2017 (4) SA 461 (GP) and Millar AJ in LO v Road Accident Fund (14606/2016) (2018] ZAGPPHC 181 (5 February 2018)

⁹ In Kramer's report of 2 September 2019

24. There is thus a difference in the two experts calculations of R1 007 161.

25. The question is: why? The answer is to be found in the application of the opinion of the plaintiffs Industrial Psychologist Elna Rossouw (Rossouw) who states in her report:

"8.2 Had it not been for Mr Forgey's fatal accident, he would all in likelihood have been able to provide financially for both his children...primary, secondary and under-graduate studies ...

8.3 he would also have provided financially for their post-graduate studies. Had the children pursued post-graduate studies [i.e. Honours; NQF 8 and I or Master's Degree (NQF 9) on a part-time basis (during which time they would have worked), they would have required less financial support from Mr Forgey as he would probably have continued to provide for their accommodation, living expenses). Alternatively, had the children studied on a full-time basis Mr Forgey would have continued to fully support them financially. It is likely that they would have studied on a full-time basis until the end of their Honours Degrees (minimum of four years each) and that they would have done their Master's Degree's on a part-time basis over a two-year period.

8.4 Had either or both of the children furthered their studies in a field that required community service year, following the completion of their Master's Degree (NQF 9), it is considered likely that they would have received an income during this time. Therefore, they would have required the financial support from Mr Forgey." (emphasis provided)

26. What is clear from Rossouw's report is that, until Luc and Mia have completed their Honours Degrees, they would have been financially dependent on Mr Forgey (whether wholly or in part).

27. I am also mindful of the fact that defendant not only did not appoint either an industrial psychologist or educational psychologist of its own and the plaintiff's reports of these two appointed experts were admitted by defendant.

28. This being so, the defendant's argument that the children would cease to be financially dependent at the respective age of 21 is rejected.

Conclusion

29. I therefore find that, based on the common cause and admitted facts and Rossouw's opinion as set out in paragraph 25 (supra), Mr Kramer's calculations (in his report dated 2 September 2019), on Basis Bis correct.

Draft order

30. By agreement, (save for the amount) a draft order was provided to me. I have completed blank draft order to insert the amount of R4 454 648.

Order

31. Thus the order I make is the following:

The draft order marked 'X', as amended, is made an order of court.

NEUKIRCHER J
JUDGE OF THE HIGH COURT

Counsel for Applicant: Mr Avvakoumides

Instructed by de Broglia Attorneys

Counsel for Respondent: Mr Skhosana

Instructed by Marivate Attorneys

Date of hearing: 29 August 2019

Date of judgment: 4 September 2019

