

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

DATE: 25/6/2019

CASE NO: 27468/11

In the matter between:

ELIZABETH MMATSELENG LETSOALO

PLAINTIFF

And

ROAD ACCIDENT FUND

RESRONDENT

JUDGMENT

MAKHOBHA, AJ

- [1] Plaintiff instituted an action against the defendant for damages suffered as a result of the death of her son who was killed in a motor vehicle collision on the 14th September 2007. The deceased was a pedestrian when he was hit by a motor vehicle driven by one Mr R.L Visagie bearing registration number [....]. The plaintiff is the biological mother of the deceased and she alleges that the deceased was her bread winner supporting her at the time of his death.
- [2] The merits were settled between the parties 90%. The issue to be determined by the court is whether the deceased had a legal duty to

support and or maintain his mother namely the plaintiff.

- [3] The plaintiff is the only witness called and she testified she was biological mother of the deceased. The deceased was employed by the department of defence and was stationed at Thaba-Tshwane. He was residing with her at number [....]. He was single and maintaining her and his siblings. He helped in buying grocery and gave her money to pay the bills for the house.
- [4] In augmenting her income she had a vegetable patch. Some of the vegetables she sold to make extra income. In cross examination she testified that the deceased earned ± R2999 per month. He was employed since 2005. Every month the deceased will give her money to buy grocery, bills for the house as well as for clothing for herself. She was unemployed and did only piece jobs. She also assisted her own mother with R100 where she could. She received a state grant in the sum of R1700.00.
- [5] In **Peterson v South British Insurance Co Ltd 1964 (2) 236 (CPD) at page 238** the court said on paragraph C "ordinarily if a parent is in distress and unable to work his or her children who have the means can be compelled to contribute towards their parents' support (In re Knoop, 10 S.C 198) where a bereaved parent claims damages suffered as a result of the loss of a child such parent would have to show not only that he or she was indigent but also that the child had sufficient means to contribute"
- [6] In **Oosthuizen v Stanley 1938 AD 322 at page 32** the court said at **paragraph G** "whether a parent is in such a state of comparative indigency or destitution that a court of law can compel a child to supplement the parent's income is a question of fact depending on the circumstances of each case ..."
- [7] In **Wigham v British Traders Insurance Co. Ltd 1963 (3) 151 (WLD) at page 153** the court said "In an action of this nature plaintiff is required to prove not only that the child contributed to her support but that there was a legal duty to contribute because her circumstances were such that she needed the contribution the equivalent of which is now claimed by her for

the rest of her expectation of life"

- [8] In his heads of argument counsel for the plaintiff submitted that she is indeed indigent and was entitled to be maintained by the deceased. He asked the court to apply 5% contingency on the past and 15% contingency deductions on the future loss of support.
- [9] In contrast for the defendant counsel submits that there are no collaterals to prove what the deceased was contributing towards the maintenance of the plaintiff. Furthermore counsel argued that the plaintiff earns a state grant, has a vegetable patch, a house and therefore she is not indigent.
- [10] After hearing both counsels I am of the view that the degrees of indigence vary from one case to another. It was stated in *Oosthuizen v Stanley* supra that though the plaintiff earns an income in some instances he or she might need a supplement to the salary.
- [11] The court must be satisfied that the plaintiff succeeded to show on preponderance of probabilities that the deceased contributed to her support and there was a legal duty to support her. To put it differently she must mean to contribute towards her maintenance.
- [12] I therefore accept that the plaintiff's grant of R17000.00, the vegetable patch and piece jobs were supplemented by the cash she received from the deceased. It is clear from her evidence that without the support of the deceased's contribution it is difficult to maintain herself and her family.
- [13] Thus therefore I am of the view that the plaintiff was and she is still in a state of indigency and her deceased son had a duty to supplement her income. In addition there is no evidence that plaintiff is refusing to look for employment as she testified that she and her sons they do sometimes get temporary employment.
- [14] I do not agree with the contingency deductions as submitted on behalf of the plaintiff because I believe they do not take into account that the plaintiff receives a grant she has other means of support. Furthermore it must be borne in mind that the plaintiff had he lived he would have ultimately left the family house to start his own family.

[15] After careful consideration I am of the view that the contingency deductions to be applied in this matter are 25% contingency deductions on the past and 40 % on the future loss of support.

[16] The following order is made

16.1. Judgment in favour of the plaintiff in the sum of R237069.15 (Two hundred and thirty seven thousand and sixty nine rand and fifteen cents)

16.2. Interest calculated from the date of judgment at the rate of 10. 25% **per annum.**

16.3. Costs of suit.

D. MAKHOBHA

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

ATTORNEY FOR PLAINTIFF

:LEBALLO ATTORNEYS

(012) 3213902

COUNSEL FOR PLAINTIFF

:ADV MAELANE

ATTORNEYFORDEFENDANT

:BRIAN RAMABOA INCOPORATED

(012) 342 0900

COUNSEL FOR DEFENDANT:

ADV MONONYANE