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

CASE NO: 07999/16

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

8 September 2017

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In the matter between:

THANDEKA FLORENCE MBANGULA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

STRYDOM AJ:

Background

- [1] This is a dependant's claim where the breadwinner died as a result of a motor vehicle accident. The Plaintiff has not gone through the judicial pre-trial process, the merits were contentious and a separation in terms of Rule 33(4) was therefore inevitable. The Defendant admitted the *locus standi* of the Plaintiff as the wife of the deceased and the fact that the deceased had two children with the Plaintiff.
- [2] At the start, I wish to express my displeasure with the standard of the drafting of the Particulars of Claim. It is clear that the Particulars were drafted by another firm of attorneys; this however does not excuse the current attorneys of record and counsel from checking and correcting the poorly drafted Particulars of Claim. The attorney when attending to the drafting of other documents did so in accurately and this leads to problems later on in the trial for the Plaintiff which is not of her making. Attorneys and counsel should take more care when drafting particulars and documents as this have a direct influence on their client's case.

The evidence

- [3] The first witness called by the Plaintiff was David Mohapi. Mr Mohapi indicated that he was travelling by taxi from Sterkspruit to Johannesburg on the 16th of August 2015. He witnessed how an oncoming taxi veered into their lane to avoid something. They later established that it was a pothole. The vehicle in front of their taxi took evasive action and this caused that vehicle to overturn.

- [4] He later learnt that someone had died in that accident. The accident took place in the afternoon at Mageteng Village, Eastern Cape. He had reported this incident to an attorney here in Johannesburg.
- [5] The Plaintiff at that stage closed her case. The Defendant did so similarly. At this stage, the Particulars of Claim read that the accident took place on 16 October 2014 at Mateneteng, Eastern Cape Province. The Plaintiff then requested to reopen her case to call the Plaintiff. The Defendant objected to the reopening of the Plaintiff's case on the basis that it will not cure the problem experienced by the Plaintiff.
- [6] The re-opening was granted as there no other evidence was lead and it was requested immediately upon realising the problem. This is a claim of dependent minors and I am of the view that the Court should not be overly pedantic. The effect of a refusal would have resulted in an absolution from the instance ruling. This would have caused an unnecessary delay in the finalisation of the matter. I am of the view that there is no prejudice for the Defendant.
- [7] The Plaintiff testified that on 16 August 2015 at around 17:30 she was at her home in Mageteng Village, Eastern when she was informed that her husband was in a motor vehicle accident and that he had passed away. She attended the scene of the accident and found the vehicle there.
- [8] She presented the death certificate of her husband, the deceased which indicated that George Lesiea with identity number [...] died of unnatural causes on 16 August 2015 at Sterkfontein. She was confronted in cross examination with two other documents relating the two conflicting dates of the accident. She indicated that at the time of signing the one document she was admitted to a psychiatric hospital for treatment and didn't take notice. It is this type of problems that arise when attorneys and counsel do not apply their minds to the particulars in pleadings and other documents.

[9] The Plaintiff closed his case and after some discussion requested an amendment of the Particulars of Claim to bring it in line with the evidence given. The amendment was granted so that it is clear that the deceased died on 16 August 2015 at Mageteng in the Eastern Cape.

[10] The Plaintiff requested that the Court finds that the deceased died on 16 August 2015 in the accident as related by the witness. It was argued that it is improbable that there were two accidents around the same time. The Defendant conceded that if the accident witnessed by Mr Mohapi was the one in which the deceased died then it proves a 1% negligence by the insured driver. It was further argued that absolution from the instance should however be granted.

[11] The facts before me are that on 16 August 2015 there was an accident in which a person/s died. This accident was in the afternoon and more specifically between 4 – 5 pm. The person who died in the accident is identified as the husband of the Plaintiff who had an identity number [...].

[12] I find on the probabilities that the deceased, George Lesiea, with identity number [...] (as identified by his death certificate) died as a result of the injuries sustained in the motor vehicle accident of the 16th of August 2015. It was admitted that he was married to the Plaintiff and that they had two dependant minor children. I am further satisfied that the Plaintiff showed that the unknown insured driver was at least 1% negligent.

[13] I therefore make the following Order:

[13.1] The issues of liability are separated from the issues of quantum in terms of Rule 33(4).

[13.2] The issues of quantum are postponed *sine die*.

[13.3] The Defendant is to pay 100% of the Plaintiff's proven damages; and

[13.4] The Defendant is ordered to pay the costs.

I STRYDOM
ACTING JUDGE OF THE HIGH COURT

Date of Hearing: 1 September 2017

Judgment Delivered: 8 September 2017

Counsel for the Plaintiff: Adv Ludidi

Instructed by: Nompumza Attorneys

Counsel for the Defendant: Adv Van den Berg

Instructed by: Shereen Meersing & Associates