

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

- (1) NOT REPORTABLE
(2) NOT OF INTEREST TO OTHER JUDGES

CASE NO: 18103/2011

18/5/18

In the matter between:

NETSUMBENI ELIAS MOLEA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MIA, AJ

- [1] The plaintiff, Netsumbeni Elias Molea, is the biological father of Peter Molea (the deceased) residing at House 851, Nancefield, Musina. The plaintiff was the deceased's biological father. The deceased died in a collision which occurred on 1 December 2008 at 12h00 on the N1 Road Bandelierkop, Dwarsrivier, between a vehicle driven by the deceased and a motor vehicle driven by N Mmege (insured driver). The plaintiff instituted an action for damages against the defendant in terms of the provisions of the Road Accident Fund Act, Act 56 of 1996 ("the Road Accident Fund

Act") arising from future loss of support in the amount of R506 350.00. The plaintiff alleged the deceased had he not been killed was legally obliged to support and to continue supporting the plaintiff as he had been doing prior to his death.

[2] The merits were conceded by the defendant on 25 October 2013. The only outstanding issue remaining was the issue of future loss of support of the plaintiff, the father of the deceased. There was no dispute regarding the duty of support. The deceased had he not been killed was legally obliged to support and to continue supporting the plaintiff as he had been doing prior to his death. The defendant however disputed the indigency of the plaintiff and the need for such support. The plaintiff testified and did not call any further witnesses.

[3] The plaintiff, Mr Molea, was born on 5 September 1951 and resides at [...]. He was the biological father of the deceased. Mr Molea testified that the deceased supported him monetarily and was obliged to do so as his son. A bundle of documents was handed up by agreement between the parties and marked exhibit "A". Exhibit "A" was comprised of salary advices of Mr Molea as well as the deceased. Mr Molea testified that he was employed at JOG Trading during the period that he received financial assistance from the deceased. He commenced working at JOG Trading in 2002 initially on a temporary basis selling furniture to outer lying areas. When there were no deliveries further afield he assisted with sales outside the store. He was employed to and received a salary to load trucks but engaged in sales for which he received a commission. Page 9 of Exhibit "A" reflects his income as R4012.04 in September 2014.

[4] He explained however that his average salary ranged between R2367 and R2745. In the month before his son died his salary was R2367. He testified that this amount was not sufficient to support himself and his children. He had four children to maintain. His wife was unemployed when she was alive. One of the four children was working but was not employed in a full time position. The deceased worked initially as a train assistant. He was not aware of the deceased's income but he received R2000 per

month from the deceased each month to assist with maintenance of the deceased's siblings. Page 26 of Exhibit "A" reflects the deceased's last salary as an amount of R8589.56.

[5] Mr Molea testified that he currently receives a State pension in the amount of R1500 per month since 2014 indicating he was 61 years old. He corrected himself under cross-examination to confirm that his age is 67 years old. He testified that he only received a pension from the State and not from his previous employer JOG Trading. Whilst he acknowledged that his salary advice indicated there were deductions for a pension contribution, he testified that he did not receive a pension from JDG Trading. He confirmed he did not require support for his wife who passed on in 2011 and the children were over 18 years old except one child who was under 18 years old. He received a child care grant for this child who is currently 15 years old. He testified however that one of the adult children whom he supports is physically disabled but has not applied for a disability grant.

[6] Mr Molea testified that he was not aware that the defendant had already paid a claim for loss of support to a dependant of the deceased, namely his daughter. He testified that he received R40 000 from AVBOB arising out of the deceased's death but did not ascertain what benefits from life policies were payable after the deceased's death and what pension was payable and due. He confirmed that he received the letters of authority and was listed as the only beneficiary of the deceased. He acknowledged that a pension may be payable by the deceased's employer. He testified however that he approached the employers' offices at Messina. They were not able to furnish him with information. He was informed to approach the office at Tzaneen. He then decided to approach the employer regarding a pension pay out after he accessed the defendant for a loss of support claim.

[7] Mr Swart appearing for the plaintiff submitted that there was an established amount of R2000 per month received from the deceased each month. The defendant was not able to dispute this. The plaintiff required this assistance from the deceased each month and saw it as an obligation

to his family. There was an established regular payment apart from the deceased's duty to maintain his father. Whilst Charmaine, the minor child of Mr Molea, was receiving a child support grant it was not clear whether Johanna was able to access a grant. He conceded that there was a possibility that money may be forthcoming from SA Mutual Life as there appeared to be a deduction on the salary advice on page 11 of Exhibit "A" in the amount of R388 per month.

[8] Mr Mshaba appearing for the defendant submitted that the facts of the present matter did not indicate that Mr Molea was indigent. In 2011 when he was in receipt of a grant he was employed. The defendant had paid the minor child of the deceased per the actuarial calculation. If the defendant were required to pay the plaintiff it would be prejudicial to the public purse as it would be a duplication of a payment to dependants of a deceased. He submitted further that the claim by the plaintiff was flawed as it made no provision for bequests or contingencies and did not take account of the pension received and the grants received in respect of the minor child. He submitted further that the plaintiff admitted that he would be approaching the employer regarding the deceased's pension. There was thus also the possible pay out from SA Mutual Life. Having regard to this the plaintiff failed to prove his indigency and his case should thus fail with costs which should include the experts reports. In the alternative he submitted the court ought to grant absolution from the instance.

[9] In *Fosi v RAF* [2007] JOL 19399 (C) Dlodlo J at para [11] referred to

"[11]The test was set out in *Smith v Mutual & Federal Insurance Co Ltd* 1998 (4) SA 626 (C) at 6320-E as follows:

"To be indigent means to be in extreme need or want whereas to be poor means having few things or nothing. Accordingly, when the plaintiff pleads indigence, it is not sufficient to show that the plaintiff lives on very little or nothing (*vide World Book dictionary*). The plaintiff must prove something more. The plaintiff must prove that there is an extreme need or want for the basic necessities of life."

[10] Dlodlo J compared the above test which he regarded as onerous to the one set out by Bekker J in *Wigham v British Traders Insurance Co Ltd* 1963 (3) SA 151 (:IV) at 153, namely:

"The authorities furthermore make it clear that in order to succeed a plaintiff is not required to show that she would be reduced to abject poverty or starvation and be a fit candidate for admission to a poor house unless she received a contribution. The Court must have regard to her status in life, to what she has been used to in the past and the comforts, conveniences and advantages to which she has been accustomed . . . The aim and object is to place the dependants in as good a position as regards maintenance as they would have been if the deceased had not been killed, to which end material losses as well as benefits and other prospects must be considered."

[11] In the present matter Mr Molea is in receipt of a State pension as well as a child support grant. He no longer receives the money from the deceased each month. He has however received a lump sum from AVBOB. As the only listed beneficiary in the estate of the deceased he will receive any monies due from any policies. There was no indication that no monies were due to the estate of the deceased. The SA Mutual Life policy has not been claimed and Mr Molea has conceded he only intends approaching them after approaching the defendant. This was short-sighted as Mr Molea is not in a position to show that there are no gains and this is an aspect that this court must take into account. The policy may well provide sufficiently for the deceased's beneficiary and Mr Molea is listed as a beneficiary. Consequently he has not proved his indigency and need for loss of support with the question of the SA Mutual Life policy unresolved and the extent of the payment undetermined.

[12] For the reasons above, I accordingly make the following order:

1. The defendant is granted absolution from the instance.

2. The plaintiff is ordered to pay the costs of the action.

SC MIA
ACTING JUDGE OF THE HIGH COURT OF SOUTH
AFRICA GAUTENG DIVISION, PRETORIA

Appearances:

On behalf of the plaintiff	:	Adv Swart
Instructed by	:	Erwee Attorneys
 On behalf of the Defendants	 :	 Adv Mshaba
Instructed by Tsebane Molaba Inc		
 Date of hearing	 :	 22 March 2018
Date of judgment	:	18.May 2018