

## Calculating loss of support claims

By Ivan Kramer

If a dependant is compensated for the loss of support by a breadwinner, does the dependant receive

- the support that would have been received had the accident not occurred; or
- the support he or she would have received had the death not occurred?

What difference does it make? If, for example, one child is killed in the same accident as the breadwinner, there would be a difference. For calculation purposes, the income of the deceased is generally split between the different dependants, each adult receiving a two part share and each child a one part share.

If the claim is calculated as if the accident had not occurred, then the situation as it stood before the accident is taken into account. The breadwinner was supporting the whole family, including the child who died in the accident. The calculation of support is thus done reducing the shares of the surviving dependants to allow for support for the child that was killed.

If the claim is calculated as if the death had not occurred, then the calculation is done taking into account everything that has happened, except for the death of the breadwinner. The child who died is excluded in the same way as if he or she had died on that day in a way unrelated to the accident. Had the breadwinner not died, he or she would have supported the family, excluding the child who died. The calculation of support would not allow for a share for the deceased child and therefore the shares for the surviving dependants would be higher.

In *Road Accident Fund v Monani and Another* 2009 (4) SA 327 (SCA), the ruling was that the calculation must ignore the parts consumed by the deceased child (ie, as if the death of the breadwinner had not occurred).

What would the position be if both parents died in the same accident? What would the position be if both parents were earning an income? Could the principle in the *Monani* case apply? Would the ruling in *Santam Insurance Co Ltd v Fourie* 1997 (1) SA 611 (A), as explained below, still apply and the joint income be pooled or will the losses of the children be calculated separately for each parent as though the other parent did not exist?

The first scenario is where the mother (who also died in the accident) was earning no income. In the same way that, in the *Monani* case, the deceased child was excluded from the calculations since he would not have required future support, so too here the deceased mother would be excluded from the calculation since she would not have required future support.

Where the mother was earning an income, a few scenarios need to be considered. In the examples below, it will be assumed that the father was earning more than the mother. However, the same principles would apply if the mother was earning more, just by swapping the terms father and mother below.

### **Mother earning income, but not enough to support herself**

Including the mother in the calculation: First, it needs to be examined how the calculations would be done without the application of the judgment in the *Monani* case (ie, as things stood before the accident). Based on the *Santam* case, the joint income of the family and the share of each family member will be taken into account. The income of each breadwinner is assumed to be first used to meet his or her share of the apportioned income, any residue being used for the share of the other breadwinner and the remainder going to the support of the children.

In this case, the full income of the mother would have gone to her own support and, in addition, she would have received further support from her husband. Thus the father would have been supporting himself, the two children and providing partial support to his wife.

*Excluding the mother from the calculation:* Can the principle in the *Monani* case be applied to this case? The answer is yes: Had the mother died in the accident but the father survived, the father would no longer have had to provide the partial support to the mother (being the cost of her support in excess of her own income). He would therefore have been able to provide extra support to the children. Since, in this scenario, the mother would be excluded from the calculation, both her income and her required support would be excluded. The income to be shared among the remaining family members would be the father's income alone.

Using the same logic as in the *Monani* case would allow the children to claim this higher level of support.

### **Mother earning less than the father, but enough to support herself and give partial support to the children**

*Including the mother in the calculation:* Based on the *Santam* case, the income of each breadwinner is assumed to be first used to meet his or her share of the apportioned income. Thus the father supports himself and the excess is used to support the children. The mother also supports herself, and the excess is used to support the children. The children are therefore receiving support from each parent. Their claim would be the sum of the support received from the father and the mother.

*Excluding the mother from the calculation:* Can the principle in the *Monani* case be applied to this case? Had the mother died in the accident but the father survived, the father would have to support the children from his own income alone. The support the children received from their mother would fall away. The father could no longer rely on the support to the children previously provided by the mother. Even though the father would reduce his own share of his own income to provide more to the children than he had before, overall the children would be receiving less than they had before the accident (when they were partially supported by both parents). Thus, here, applying the principle in the *Monani* case would not help them. They would be better off claiming the loss of support they received from the father and the mother before the accident.

### **The principle**

The typical way of compensating a dependant is to receive the same support he or she would have received had the accident not occurred. However, the death of certain family members in the accident could have increased the support the remaining dependants would have received from a breadwinner, had he or she survived. In the *Monani* case, by excluding the deceased child, it was accepted that the remaining dependants should get the benefit of this increased support.

### **Earlier question**

Depending on the income of the parents, the principle in the *Monani* case could apply, if both parents were killed. Will the losses of the children be calculated separately for each parent as though the other parent did not exist?

The answer is no. Whenever two possible ways of calculating the loss of support was presented above, each of these was based on either a scenario that did exist (ie, had the accident not occurred) or would have existed (ie, had only the father but not the mother survived the accident). In this latter scenario, the mother was excluded from the calculation, since, in fact, the father would have been supporting the children alone. There would therefore not be a justification for adding the support the mother, on her own, could have provided the children.

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