

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**Wayne Coughlan N.O. v The Road Accident Fund**

Case CCT 160/14

[2015] ZACC 09

Hearing Date : 12 February 2014

Judgement Date: 20 April 2015

Media Summary

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment on whether foster child grants are deductible from compensation payable by the Road Accident Fund (RAF) for loss of support.

The applicant, Mr Wayne Saleem Coughlan N.O., brought this application as the court-appointed representative of three orphaned children. The children were orphaned after their mother, at the time a pedestrian, was fatally struck by a motor vehicle in June 2002. After the death of the children's mother, the maternal grandmother applied to the Children's Court to be appointed as a foster parent to the three children. As a result of the appointment, the grandmother became eligible to receive foster grants in terms of the Social Assistance Act. Immediately before the death of their mother, two of the children primarily lived with their grandparents, while their mother made financial contributions towards their care.

Mr Coughlan lodged a claim with the RAF for loss of support on behalf the children. The RAF admitted liability and both parties agreed that the quantum of damages was R112 942. However, the RAF was of the view that the amount the foster parents had received for the foster child grants should be deducted from this amount and that a failure to do so would amount to double compensation

Mr Coughlan successfully approached the High Court seeking an order declaring that the foster child grants were not deductible from damages from the RAF for loss of support as the payments serve a different purpose. The RAF appealed against this decision to the Supreme Court of Appeal, which upheld the appeal and set aside the High Court judgment. The Supreme Court of Appeal reasoned that there was no evidence to show that, before the death of their daughter, the grandparents needed additional funds to take care of the children. The reasoning continued that it was as a result of the death of their mother that the grandparents applied for the foster child grants. It concluded that the foster care grants were to be taken into account in assessing the damages to be awarded for loss of support. Since the amount of the foster care grants exceeded the damages agreed to be payable by the RAF, no compensation was payable.

Before this Court, Mr Coughlan argued that the provision of the foster child grants by the state is in fulfilment of its constitutional obligations in respect of the children and, as such, it cannot be said that payment of damages for loss of support creates double compensation. The RAF maintained that the grant should be deducted.

In a unanimous judgment by Tshiqi AJ, the Court held that the nature and purpose of the foster child grants is unrelated to compensation for loss of support; the grant is not predicated on the death of a parent and there is no causal link between the payment of the grant and damages for loss of support; and that the grant is paid to the foster parent, who may use it for the welfare of the child. Further, at the request of the Centre for Child Law (as friend of the court in these proceedings) this Court extended its reasoning also to be applicable to child support grants, in addition to foster child grants. The appeal was upheld and the order of the Supreme Court of Appeal set aside.

The Full judgment is in pdf format here (Kb).



Full judgment (Word Format) [here](#) .



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