



CONSTITUTIONAL COURT OF SOUTH AFRICA

Wayne Coughlan N.O. v Road Accident Fund

CCT 160/14

Date of hearing: 12 February 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.

On Thursday, 12 February 2015 at 09h00, the Constitutional Court will hear an application for leave to appeal against a decision of the Supreme Court of Appeal concerning whether foster care grants amount to double compensation and are deductible from compensation paid by the Road Accident Fund (RAF) for loss of support.

Wayne Saleem Coughlan N.O. brings this application against the RAF in his capacity as a court-appointed representative of three orphaned children. The children were orphaned after their mother, a pedestrian, was fatally struck by a motor vehicle on 16 June 2002. Their maternal grandparents successfully applied to be their foster parents in terms of the now-repealed Child Care Act. They received foster care grants amounting to R770 per month for each child in terms of the Social Assistance Act. Immediately prior to the death of their mother, two of the children had primarily lived with their grandparents while their mother made financial contributions towards their care.

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 child foster grants should be deducted from the amount of damages awarded and that a failure to do so would amount to double compensation.

Coughlan successfully approached the High Court seeking an order declaring that the foster care grants were not deductible from RAF loss of support damages as they 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 Court

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 Court reasoned 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 to Coughlan.

In this Court, Coughlan argues that the provision of the foster care 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 persists in its argument, as endorsed by the SCA, that payment of the foster child grants is directly linked to the death of the children's mother and, accordingly, constitutes double compensation and must be deducted from the loss of support claim.

The Centre for Child Law has been admitted as *amicus curiae* in this Court and in essence it supports the arguments advanced by Coughlan. It further asks this Court to declare that child care grants, like foster care grants, should not be considered double compensation.