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REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): RM GANNIE (“complainant”) v ROAD FREIGHT AND LOGISTICS INDUSTRY PROVIDENT FUND (“first respondent”); SALT EMPLOYEE BENEFITS (PTY) LTD (“second respondent”) AND STRATOSTAFF (PTY) LTD (“third respondent”)

[1] INTRODUCTION

- 1.1 This complaint concerns the quantum of the death benefit paid to the beneficiaries of a deceased’s member, Mr MS Gannie (“the deceased”) by the first respondent.
- 1.2 The complaint was received by this Tribunal on 5 July 2016. A letter acknowledging receipt of the complaint was sent to the complainant on 12 July 2016. On the same date, a copy of the complaint was dispatched to the third respondent requesting it to file its response by 9 August 2016. On 27 July 2016, a copy of the complaint was sent to the first respondent requesting it to file its response by 24 August 2016. On

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26 August 2016, follow-up letters were sent to the respondents requesting them to file their responses by 9 September 2016. A response was received from the second respondent on 29 August 2016. No response was received from the third respondent.

- 1.3 Having considered the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] **FACTUAL BACKGROUND**

- 2.1 The deceased was a member of the first respondent during his employment with the third respondent from 11 March 2013 until his date of death on 24 August 2014. The complainant is the father of the deceased. The deceased is survived by the following:

Mohammed Gannie (the complainant)	Father;
Shiraaaz Gannie	Brother;
Sabeehah Gannie	Sister;
Amina Gannied	Mother;

- 2.2 Following the death of the deceased, a death benefit in the amount of R6 321.17 fund credit, investment income of R1 257.87 plus an insured portion of R23 361.60 was paid to his beneficiaries as follows:

Mohammed Gannie (the complainant)	40%;
Shiraaaz Gannie	10%;
Sabeehah Gannie	10%; and
Amina Gannied	40%

- 2.3 The complainant is dissatisfied with the quantum of the death benefit paid to the deceased's beneficiaries.

[3] **COMPLAINT**

- 3.1 The complainant mentioned that the first respondent failed to pay the death benefit in full. He mentioned that the first respondent did not pay twice the deceased's annual salary, rather only one-third annual salary to the deceased's beneficiaries. He stated that the third respondent paid all contributions to the first respondent.
- 3.2 The complainant requests this Tribunal to order the first respondent to pay the full death benefit to the deceased's beneficiaries.

[4] **RESPONSES**

First and second respondents

- 4.1 The second respondent submitted that the deceased became a member of the first respondent in September 2013 and contributions were received and allocated on behalf of the deceased from September 2013 to August 2014. It mentioned that the death benefit is an amount equal to two times the member's salary plus the amount equal to the member's individual account. It stated that the benefit payable is based on the date in which the event occurs and for which cover is paid.
- 4.2 The second respondent submitted that in August 2014, the deceased's contribution was R97.34 which means that the pensionable salary was $R11\,680.80 \times 2 = R23\,361.80$ risk benefit. It mentioned that the attached payslip for August 2014 indicated the total pay as R584.01 (x12 = R7 008.12). It stated that this salary was not used as the benefit is based on the pensionable salary and the payment received by the first respondent including the risk premiums. It submitted that it is unable to comment on the period prior September 2013 and requested that the third respondent to address it. It confirmed that contributions are up to date for the third respondent.

4.3 In its further submissions, the second respondent provided this Tribunal with the deceased's annual salaries as follows:

Effective date	Annual salary	Risk salary
1/08/2014	R11 680.80	R11 680.80
1/07/2014	R35 041.20	R35 041.20
1/04/2014	R46 720.80	R46 720.80
1/03/2014	R58 401.60	R58 401.60
1/01/2014	R43 264.80	R43 264.80
1/12/2013	R54 093.60	R54 093.60
1/09/2013	R43 264.80	R43 264.80

Third respondent

4.4 The third respondent was granted an opportunity to comment on the allegations made against it as required in terms of section 30F of the Act. No response was received from the third respondent. In the circumstances, this Tribunal will determine this matter based on the available submissions.

[5] DETERMINATION AND REASON THEREFOR

Introduction

5.1 The issues for determination are firstly, whether or not the death benefit was calculated in terms of the rules of the first respondent.

5.2 There is a dispute of fact in that the complainant stated that the deceased left his employment on 1 March 2015. He provided this Tribunal with a copy of the deceased's death certificate indicating 24 August 2014 as the date the deceased's employment terminated as it coincide with the date of death.

The deceased's membership with the fund

5.3 The payment of any benefit that is due to a member of a fund is regulated by the fund's rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E and section 13 of the Act).

5.4 Rule 2.3 of the first respondent's rules dealing with membership of a fund provides as follows:-

"2.3 The FUND is compulsory for employees of members of the Bargaining Council for the Road Freight and Logistics Industry who have not established funds or trade union members who chose to transfer their benefits from the employer fund to the FUND and to members referred to in rule 2.2."

5.5 Rule 3 of the first respondent's rules dealing with contributions provides as follows:

3.1 Contributions by the Member

3.1.1 The MEMBERS shall contribute to the FUND at the rate to be agreed upon between the EMPLOYERS and the UNIONS, provided that, if an employee was a member of an Employer Fund and the rate of contribution paid by him to the Employer Fund prior to transfer was higher than the agreed rate of PENSIONABLE SALARY then he must contribute to the Fund at the higher rate.

3.1.2 ...

3.1.3 ...

3.2 Contributions by the Employer

3.2.1 The EMPLOYER shall make a monthly contribution to the FUND in respect of each MEMBER in SERVICE at the rate to be agreed upon between the EMPLOYERS and the UNIONS less the premium paid to the independently arranged

FUNERAL SCHEME provided that, if an employee was a member of an Employer Fund and the rate of contribution paid by the employer in respect of him to the Employer Fund prior to transfer was higher than the agreed rate then the employer must contribute to the FUND at the higher rate less the premium paid to the independently arranged funeral scheme.”

5.6 Rule 3.3 of the first respondent’s rules goes on to provide as follows:

“3.3.1 All contributions due in terms of RULES 3.1 shall be paid into the FUND, together with contributions made by the EMPLOYER in terms of RULE 3.2, within seven days after the end of the month in respect of which the contributions were made, in accordance with the provisions of section 13A of the ACT.”

5.7 The third respondent has a duty placed on it by the provisions of section 13A(1)(a) of the Act and the rules of the first respondent to pay contributions and submit schedules to the first respondent indicating on whose behalf payment is being made, and the first respondent in turn has a duty to pay out benefits to the members. Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund’s account and section 13A(3)(a)(ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contributions no later than seven days after the end of that month for which contributions are payable.

5.8 It is common cause that the deceased commenced his employment with the third respondent from 11 March 2013 until his death on 24 August 2014. The second respondent stated that contributions were received and allocated on behalf of the deceased from September 2013 to August 2014. It provided this Tribunal with the deceased’s contribution schedules indicating contributions received on his behalf for September 2013 to August 2014. At the time of the deceased’s employment, it was compulsory for an employee in the road freight industry to participate in the first respondent. As an employer in the

road freight industry, the third respondent ought to have registered the deceased as a member of the first respondent and pay contributions on his behalf from March 2013 to August 2014.

5.9 According to the information obtained from the Companies and Intellectual Property Commission (“CIPC”) website obtained on 15 November 2016, the third respondent is still in business. From the submissions before this Tribunal, the third respondent is in arrears with provident fund contributions on behalf of the deceased for March 2013 to August 2013. The third respondent failed to comply with the provisions of rules 2.3, 3.1 and 3.2 of the first respondent’s rules.

5.10 The third respondent owes a duty of good faith derived from common law to its employees. By failing to register the deceased as a member of the first respondent timeously and pay provident fund contributions on his behalf, the third respondent has breached this duty (see *Crone v Southern Life Association Ltd and Others* [1999] 9 BPLR 1 (PFA)). The appropriate remedy is to order the first respondent to register the deceased as a member of the first respondent timeously and pay contributions due (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C) at 3839F-G and *Mabale v Feedmix Provident Fund and Others* [2008] 1 BPLR 29 at 37E-F).

Payment of the death benefit

5.11 Rule 7.1 of the first respondent’s rules dealing with death in service provides as follows:

“7.1.1 In the event of the death of the MEMBER the benefit payable shall not form part of the assets in his estate but, subject to the provisions of the RULES 9, shall be dealt with in accordance with section 37C of the ACT.

7.1.2 If a MEMBER dies whilst in the SERVICE of his EMPLOYER before attaining age 70 then the FUND shall pay his BENEFICIARIES:

- (a) subject to RULE 7.2, and amount equal to two times the MEMBER'S SALARY; plus
- (b) an amount equal to his MEMBER INDIVIDUAL ACCOUNT plus a proportionate share of the INVESTMENT RESERVE ACCOUNT."

5.12 In *casu*, the deceased died on 24 August 2014 whilst still in employment. Therefore, the provisions of rule 7.1 of the first respondent's rules are applicable as the deceased was a member of the first respondent at the time of his death. The second respondent submitted that in August 2014, the deceased's contribution was R97.34 which means that the pensionable salary was $R11\,680.80 \times 2 = R23\,361.80$ risk benefit. It mentioned that the attached payslip for August 2014 indicated the total pay as R584.01 ($\times 12 = R7\,008.12$). It stated that this salary was not used as the benefit is based on the pensionable salary and the payment received by the first respondent including the risk premiums. The second respondent provided this Tribunal with the deceased's contribution schedules indicating R97.34 as his contribution for the month of August 2014. The death benefit was calculated using the contribution the first respondent received in August 2014.

5.13 In *Mothele v Road Freight and Logistics Industry Provident Fund PFA/GP/00025886/2016/CVP* the second respondent explained that the risk benefit that is payable upon the death of a member amounts to twice the member's annual salary at date of the members demise and is based on the member's pensionable salary at that time.

5.14 The second respondent confirmed that at the date of the deceased's death in August 2014, his contribution to the first respondent was R97.34 per month. Currently, in terms of the first respondent's rules, the contribution rate is calculated at 10% of the members' annual salary. Therefore, the deceased's pensionable salary at the date of his death

was R973.40 per month which amounts to R11 680.80 per *annum*. It stated that in terms of the first respondent's rules, pensionable salary is defined as the salary such member and employer may agree upon from time to time. In terms of rule 7.1.2 of the first respondent's rules, the death benefit that will become payable amounts to twice the member's annual salary plus the member's fund credit at the time of death. The second respondent submitted that in terms of the first respondent's risk policy, salary is defined as the pensionable salary of an eligible employee and pensionable salary is defined in the first respondent's rules.

- 5.15 The second respondent annexed a copy of the deceased's contribution schedule reflecting all contributions received on his behalf for the period September 2013 to August 2014. According to the contribution schedule, the deceased's last contribution at the date of his demise amounted to R97.34. Therefore the deceased's annual salary of R11 680.80 (which is R973.40 x 12) x 2 amounted to R23 361.60. A total death benefit in the amount of R30 940.64 consisting of R23 361.60 plus fund credit of R6 321.17 and investment income of R1 257.87 was paid to the deceased's beneficiaries on 11 February 2016 and 17 March 2016, respectively. The death benefit that was payable to the deceased's beneficiaries was twice the deceased's annual salary as at the date of the deceased's demise and is based on the premiums paid by the third respondent at that date.
- 5.16 From the submissions before this Tribunal, the death benefit was calculated in accordance with the first respondent's rules and no further benefit is due to the deceased's beneficiaries. The complainant disputed the quantum of the death benefit paid to the deceased's beneficiaries, however he failed to establish before this Tribunal that the deceased's beneficiaries are entitled to the relief that they are seeking (see *Pillay v Krishna* 1946 AD 946 at 951). This Tribunal would like to highlight that only the deceased's fund credit is affected by the

outstanding contributions due by the third respondent and the risk portion is not affected. As the deceased was a member of the first respondent at the time of death, the outstanding contributions must be subjected to section 37C of the Act.

[6] ORDER

6.1 In the instance, the order of this Tribunal is as follows:-

- 6.1.1 The first respondent is ordered to register the deceased as its member from March 2013 to August 2014 within two weeks of the date of this determination;
- 6.1.2 The third respondent is ordered to submit all outstanding contribution schedules to the first respondent for the period March 2013 to August 2013 in order to facilitate the computation of the deceased's contributions, within three weeks of this determination;
- 6.1.3 Should the third respondent fail to comply with paragraph 6.1.2, the first respondent is ordered to reconstruct the deceased's contribution schedules based on the information already in its possession, within two weeks of the third respondent's failure to submit the schedules;
- 6.1.4 The first respondent is ordered to compute the deceased's outstanding contributions plus late payment interest owed by the third respondent in terms of section 13A(7) of the Act, within one week of receiving the contribution schedules in terms of either paragraph 6.1.2 or 6.1.3 (whichever is applicable);

- 6.1.5 The first respondent is ordered to transmit to the third respondent its computations in paragraph 6.1.4, within three days of completing them;
- 6.1.6 The third respondent is ordered to pay the first respondent the deceased's outstanding contributions together with late payment interest as computed in accordance with paragraph 6.1.4 *supra*, to the first respondent within two weeks of receiving the computations from the first respondent;
- 6.1.7 The first respondent is ordered to pay the outstanding death benefit to the deceased's beneficiaries within two weeks of receipt of payment from the third respondent; and
- 6.1.8 The first respondent is ordered to provide the complainant with a breakdown of the death benefit within two weeks of making payment in paragraph 6.1.7 above.

DATED AT PRETORIA ON THIS 14TH DAY OF DECEMBER 2016

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M Filing: High Court

Parties unrepresented