

**LUANSHYA DISTRICT COUNCIL v JERICHO SHADRECK MUMBA (1986) Z.R.
90 (S.C.)**

SUPREME COURT
GARDENER, AG. D.C.J., MUWO AND SAKALA, JJ.S.
11TH MARCH, 1986
(S.C.Z. JUDGMENT NO. 22 OF 1986)

Flynote

Damages - Fatal accidents Act damages - deduction of award under law Reform (Miscellaneous Provisions) Act

Headnote

The appeal arose from an award of damages by the District Registrar to the administrator of the estates of one Second Chipena who was killed in an accident for which his employer, the appellant had admitted liability. The damages awarded severe, inter alia, damages for loss of expectation of life in the sum of K10,000.

The appellant appealed on the grounds that the assessment of damages was wholly erroneous and that the award under the Law Reform (Miscellaneous Provisions) Act should be deducted from the award under the Fatal Accidents Act.

Held:

The award under the Law Reform (Miscellaneous Provisions) Act must be deducted from the Fatal Accidents Acts award to the dependants benefit under the form award.

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Cases cited:

- (1) Henwood v Naoumoff (1966) Z.R. 78
- (2) Davies v Powell Duffryn Associated Colliers Ltd [1942] 1 All E.R. 657
- (3) Cookson v Knowles [1978] 2 All E.R. 604

Legislation referred to:

Fatal Accidents Acts 1846 - 1908 (England)
Law Reforms (Miscellaneous Provisions) Act, Cap 74

For the appellant: G.Kunda, Malik and Co.
For the respondent: E.M. Mukuka, City Chambers.

Judgment

GARDNER, AG. D.C.J., delivered the judgment of the court. This is an appeal from an assessment of damages by the district registrar. The respondent claimed damages as administrator of the estate

of one Second Chipena, to whom we will refer hereinafter in this judgment as the deceased, who was killed in an accident or which the appellant his employer admitted liability by consenting to judgment. Damages were claimed for the benefit of the dependants of the deceased under the Fatal Accident Acts and on behalf of the estate under the Law Reform (miscellaneous Provisions) Act.

In his affidavit in support the respondent averred that at the time of his death on the 22nd October, 1983, the deceased was a charcoal burner earning between K60 and K80 per month and was survived by a widow and five dependent children. The respondents also claimed damages for loss of expectation of life in the sum of K10,000 and asked that the loss of income of the deceased, who was sixty-three years of age at the time of his death, should be calculated at the rate of K70 per month for a further twelve years. A further claim was put forward for loss of consortium at K5,000.

The plaintiff on his own behalf claimed damages at the rate of K50 per month being the amount paid by him to the widow for the maintenance of herself and the children since the death of the deceased. The amount awarded under this head by the district registrar was K450.

At the hearing of the application for assessment of damages by the district registrar it was held that as no reason had been given in a letter from counsel for the defendant asking for an adjournment, and, as no affidavit in opposition had been filed, the matter should proceed. Accordingly damages were awarded in accordance with the claim set out in the respondent's affidavit with the exception of the claim for K5,000 for loss of consortium. The total amount awarded in damages was K20,470. The appellant has appealed on the grounds that the assessment of damages was wholly erroneous and that the award under the Law Reform (Miscellaneous Provisions) Act should be deducted from the award under the Fatal Accidents Acts. The appellant further argues that the award of K450 to the plaintiff in respect of advance made for the maintenance of the widow and the dependent children cannot be supported.

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Mr Mukuka on behalf of the respondent conceded that the award under the Law Reform (Miscellaneous Provisions) Act was high and suggested that this should be reduced to K5,000. He maintained further that the remainder of the award should stand.

We have considered the arguments of Mr Kunda on behalf of the appellant and so far as the damages under the Law Reform (Miscellaneous Provisions) Act are concerned we agree that the award of K10,000 was wholly erroneous and in the circumstances this court has a duty to interfere with that award. So far as the award for future loss of earnings is concerned, we note that no reduction in the monthly earnings of the deceased has been made in respect of the amount which would be attributable to his own future maintenance had he survived. The calculation was therefore wrong in principle and this court is at large as to the damages to be awarded under that head.

Mr Mukuka has asked this court to take into account the effect of inflation on the potential earnings of the deceased and we agree that inflation is a matter that must be taken into consideration in the particular circumstances of current events in this country. Taking into account inflation we consider that the average monthly income of the deceased should be assessed at K110 per month or K1,320 per annum, which is an average of an estimate of his earnings from the date of death.

We do not consider it desirable in this case to split the award into two parts relating respectively to the period before trial and the period after trial as suggested by Lord Fraser in *Cookson-v - Knowles* (3). The deceased was not a salaried employee whose loss of earnings could be calculated precisely and the lost benefit of receiving interest on the special damages to the date of judgement has been compensated for by our making generous estimate of both the multiplier and multiplicand.

We consider that the appropriate multiplier in this case should be ten, and we assess the amount to be deducted in respect of the future maintenance of the deceased to be one quarter of the total awarded under this head. We would therefore award as loss of future earnings a sum calculated as follows:

K1,320 x 10 = K13,320	
Less 14 = K3,300	
Total	K9,900

Of this total sum we award half to the widow of the deceased and the other half to the five dependent children of the deceased in equal shares. This latter sum for the children will be held in trust by the registrar of the High Court.

We come now to the question of the Law Reform (Miscellaneous Provisions) Act damages. Under this head we award K1,000. Mr Kunda has argued that the amount of this award should be deducted from the award under the Fatal Accidents Acts and he has cited to us the case of *Henwood v Naoumoff* (1), in which Blagden, C.J, said that any award

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under the Law Reform (Miscellaneous Provisions) Act (1934) of England must be deducted from the other damages. Although the learned Chief Justice did not say so we presume he was following the decisions in the case of *Davies v Powell Deffryn Associated collieries Ltd* (2), in which it was held by the house of Lords that, under the common law rule that any benefit accruing on the death of a deceased must be deducted from an award under the Fatal Accidents Acts, damages for loss of expectation of life under the Law Reform Act constituted such a benefit and must be deducted. We are bound to agree that any award under the Law Reform Act must be deducted from the Fatal Accidents Acts award to the extent that the defendants benefit from the former award.

The amount of the benefit arising out of the award under the- Law Reform Act must therefore be deducted from the Fatal Accidents Acts damages. However, in view of the probable size of the deceased estate we anticipate that there will be nothing in that estate out of which to pay the costs which by virtue of this judgement we must award the appellant. These costs must be paid out of the estate of the deceased, and, if we are right in our estimation, the only amount of such estate will be the K1,000 damages under the Law Reform Act. We therefore, order that if there is nothing else in the estate the amount to be deducted from the Fatal Accidents Acts damages shall be the amount of the Law Reform Act damages namely K1,000 less whatever costs are incurred by the respondent in this action to reduce that figure.

We agree with Mr Kunda that no damages can be claimed by the respondent personally for the amount advanced to the widow and the dependants since the death of the deceased. If the sums were in fact advances, and not outright gifts, presumably the respondent would be entitled to reimburse himself out of the Fatal Accidents Acts damages which are awarded for the maintenance is the widow and the dependants from the date of death.

This appeal is allowed, the award of the district registrar is set aside and in its place we substitute an award of K1,000 Law Reform Act damages plus K9,900 Fatal Accidents Acts damages. The whole to be shared as to half to the widow and the remaining half to the five dependent children of the deceased in equal shares. Credit is to be given to the appellant in reduction of the total amount of damages of so much of the K1,000 Law Reform Act damages as remain after payment of all costs and expenses of this action and appeal incurred by the respondent. The award of costs to the respondent by the district registrar will stand, and the respondent will pay the appellant's costs of this appeal.

Appeal allowed
