

THE ATTORNEY GENERAL v SUSAN JUMBE (as administratrix of the estate of the late Moses Jumbe) (1995) S.J.

SUPREME COURT
CHAILA, CHIRWA AND MUZYAMBA, JJ.S.
17TH AUGUST 1995 AND 20TH OCTOBER 1995
S.C.Z. APPEAL NO. 7 OF 1995

Flynote

Damages - Quantum of -When interest is built into the awards

Headnote

The respondent and her late son, Moses Jumbe were living in Chadiza Court, Northmead Government Flats, Lusaka. On 19th February, 1987 Moses fell in a manhole and died. The respondent then brought an action against the appellant for damages and the learned trial commissioner awarded her K1.5 million for loss of expectation of life and K500,000 under the Fatal Accidents Acts 1846 to 1959. The interest was built in the awards. The appellant appealed against the awards.

Held:

- (i) It was proper for the trial court to lump interest with damages
- (ii) The award of damages for loss of expectation of life was inordinately high and unrealistic

Cases referred to:

- 1. Kabanda, Kajema Construction v Kasanga S.C.Z. Judgment No. 2 of 1992
- 2. Bank of Zambia v Anderson S.C.Z. Judgment No. 13 of 1993

For the Appellant: D.K. Kasote, Acting Senior State Advocate

For the Respondent: S.Sikota, Central chambers

Judgment

MUZYAMBA, J.S.: delivered the judgement of the court.

This is an appeal against an award of damages. The respondent and her late son, Moses Jumbe were living in Chadiza Court, Northmead Government Flats, Lusaka. On 19th February, 1987 Moses fell in a manhole and died. The respondent then brought an action against the appellant for damages and the learned trial commissioner awarded her K1.5 million for loss of expectation of life and K500,000 under the Fatal Accidents Acts 1846 to 1959. The interest was built in the awards. There was evidence that the manhole had been left uncovered and unmanned for sometime and that children used to play near or around the manhole and that in spite of complaints by the occupants of the flats the appellant and/or his agents failed or neglected to cover the manhole to prevent injury or loss of life.

There are two grounds of appeal. First, that the awards are very high and therefore an erroneous estimated of what the respondent was properly entitled to and second, that there was no evidence to support the award of K500,000 under the Fatal Accidents Acts.

On the first ground Mr Kasote argued that, even taking into account the racing inflation the

awards were inordinately high and therefore unrealistic and in support of his argument he cited the case of Kabanda (1). On ground 2 he argued that there was no evidence to show what damages the respondent had suffered as a result of the death of her son and therefore that the award should have been nominal.

In response to Mr Kasote's arguments Mr Sikota for the respondent argued that the awards were not unrealistic because inflation had tripled since the decision in the Kabanda case (10). That because of the massive devaluation of the kwacha over the years the awards could be termed nominal. Moreover, that the learned trial commissioner did not make a separate award for interest. That interest was fused in the award for damages

In reply Mr Kasote argued that the fusing of interest with damages was a misdirection on the part of the learned commissioner as this made it difficult for any body to discern the actual awards for damages.

We have considered the arguments by both counsel. On the merging of interest with damages we said in Anderson case (2), at page J11:

"It would not be improper for a court to say, as we have said in the past, that the lump sum has been calculated in order to take into account any interest which should be payable and that no separate award of interest under that head will be made."

The learned trial commissioner was therefore perfectly in order to lump interest with damages. Mr Kasote's argument on this issue therefore fails.

Turning to damages, we will first deal with the question of damages under the Fatal Accidents Acts. It was contended by Mr Kasote that damages under this head should have been nominal as there was no evidence to show what damages the respondent had suffered as a result of the death of her son. In Kabanda case (1) there was evidence that the deceased was of age and she could have been earning money or an income and for this reason and because there was no evidence of loss to her dependants we awarded a nominal sum in respect of Fatal Accidents damages. In cases of very young children however, it is not the practice to consider the possibility of Fatal Accidents damages. It is therefore inappropriate to award any sum at all under this head in this case as the deceased was of a tender age of three and half years. For this reason we would set aside the award under this head.

Regarding damages for loss of expectation of life, this court, in Kabanda case (1) assessed damages under this head at K25,000.00. According to figures made available to us by the Central Statistical office, prices of commodities have, due to inflation increased twelve times between July 1992 when damages in Kabanda case (1) were assessed and June 1994 when judgement in this case was delivered by the court below. what cost K9,162.07 in July 1992 cost nearly K110,000 in June 1994. Therefore, although inflation has been racing since July 1992 we would agree with Mr Kasote that the award of K1.5m under this head is inordinately high and therefore unrealistic. We would therefore set it aside.

We consider that this is a case where aggravated damages should be awarded because there was evidence that the appellant's servants and/or agents had ignored the pleas from the residents of the flats to cover the manhole which was quite obviously a hazard to the occupants of the flats, especially unsuspecting children. The proper award therefore, taking those factors into consideration should be K300,000.00. The rate of interest applicable will be the average bank rate from the date of issue of the writ until judgement and thereafter 6% until payment.

We award costs of the appeal to the appellant.
