

**IN THE SUPREME COURT OF ZAMBIA      APPEAL NO. 9/2017**  
**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

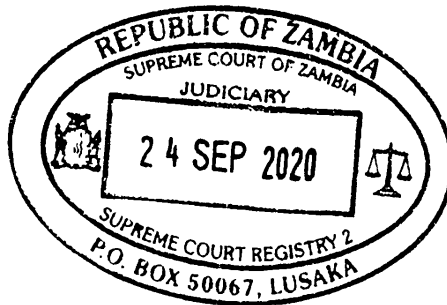
**B E T W E E N:**

**ROY SINKALA**

**AND**

**DANIEL PHIRI**

*(Suing as an Administrator of the Estate of the late Daniel Phiri Jr.)*



**APPELLANT**

**RESPONDENT**

*Coram: Hamaundu, Wood and Chinyama JJS*

*On the 1<sup>st</sup> September, 2020 and 24<sup>th</sup> September, 2020*

*For the Appellant:                      No Appearance*

*For the Respondent:                    No Appearance*

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**JUDGMENT**

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WOOD, JS, delivered the judgment of the Court.

Cases referred to:

- 1) *Litana v Chimba and Another (1987) Z.R. 26.*
- 2) *The Attorney General v D.G. Mpundu (1984) Z.R. 6.*
- 3) *Konkola Copper Mines and Zambia State Insurance Corporation Limited v John Mubanga Kapaya (as Administrator of the Estate of the late Geoffrey Chibale) and other Administrators (2004) Z.R. 232.*
- 4) *C.R. Holdings Limited, Cassius Rumsey v Jennipher Lintini (Administratrix of the estate of Amarah Doran Lintini) Selected Judgment No.29 of 2019*

Legislation referred to:

- 1) *Law Reform (Miscellaneous Provisions) Act, Cap 74*
- 2) *Article 134 of the Constitution Amendment Act No. 2 of 2016*
- 3) *Section 4 and Order 3 Rule 3 of the High Court Act, Cap 27*

**Introduction**

[1] This is an appeal against a decision of the High Court awarding damages to the respondent in the sum of K50,000.00 for loss of expectation of life and K28,519.00 special damages for funeral expenses on the ground that they were excessive and had not been proved. Further, the appeal is against the trial judge's decision to assess the damages herself and not to refer the matter to the Deputy Registrar for assessment.

**Background**

[2] The facts leading to the tragic death of the deceased are not in dispute. On or about the 4<sup>th</sup> January, 2014 the appellant was driving a Toyota Spacio motor vehicle registration number ADC 2065 along 21<sup>st</sup> Street Nkana East in Kitwe from the northern direction towards the southern direction when he lost control of his motor vehicle and veered off the road and hit

the deceased who was walking on the left side of the road. The deceased was rushed to Kitwe Central Hospital and died the same day. The deceased had at the time of his death just completed the Zambia Institute of Chartered Accountants (ZICA) Technician Certificate Level of the Institute's examinations but was not working.

- [3] The appellant in his defence admitted that he caused the death of the deceased but denied that he was driving in a manner which was dangerous to the public. During the trial of the matter, the appellant admitted liability and offered to pay K15,000.00 and then later offered to pay K20,000.00 but insisted that the sum of K75,000.00 which the respondent was claiming was excessive.

#### **The decision of the High Court**

- [4] In her judgment, the learned trial judge held that the appellant had caused the death of the deceased and entered judgment in favour of the respondent for damages for loss of expectation of life and funeral expenses. She dismissed the claim for K75,000.00 for loss of expectation of life as being

excessive and being contrary to the case of *Litana v Chimba and another*<sup>1</sup> in which we held that an award under the Law Reform (Miscellaneous Provisions) Act should be moderate and should be fixed regardless of the age of the deceased. The trial judge instead awarded the respondent K50,000.00 for loss of expectation of life. With regard to special damages relating to funeral expenses in the sum of K28,519.00, she found that these had not been disputed by the appellant and awarded them in full as claimed but took into account the sum of K1,000.00 paid by the appellant for cement and stones for the burial. The trial judge also awarded the respondent interest at the short term deposit rate from the date of the writ to the date of judgment and thereafter at the Bank of Zambia lending rate until full payment.

### **Grounds of appeal**

- [5] The appellant was dissatisfied with the judgment and has appealed against the judgment on two grounds. The first ground is that the learned trial judge erred and misdirected herself both in law and fact by awarding the respondent an

excessive amount as compensation without sufficient evidence/receipts supporting such an award. The second ground of appeal is that the learned trial judge misdirected herself in law and fact by failing to refer the aspect of assessment of damages to the deputy registrar who could have heard the evidence on assessment as opposed to the judge making her own assessment without evidence.

**Appellant's arguments**

- [6] The appellant argued with respect to the first ground of appeal that it was trite law that an award must be supported by sufficient evidence and proper considerations. The learned trial judge did not give reasons or the basis upon which she arrived at the award of K50,000.00 as compensation for loss of expectation of life. The appellant argued that damages for loss of expectation of life should be moderate as the respondent had pleaded damages under the Law Reform (Miscellaneous Provisions) Act and not under the Fatal Accidents Act. In addition, the deceased had no dependants at the time he met his death. The appellant cited the case of *Litana v Chimba and*

*another*<sup>1</sup> and another in support of the argument that damages for loss of expectation of life should be moderate.

- [7] On the issue of special damages, the appellant argued that the respondent had failed to prove his claim for special damages in the form of funeral expenses. The special damages should have been specifically pleaded and proved by receipts. The respondent had only provided a breakdown of food and other necessities in the total sum of K14,779.00 but failed to provide receipts for such a breakdown. Transport expenses estimated at K7,500.00 were not proved by receipts nor were coffin and related expenses which were said to be K4,840.00. There was also no proof for miscellaneous expenses in the sum of K1,400.00. The appellant argued that these special damages should have been specifically pleaded and proved in accordance with our decision in *The Attorney General v D.G. Mpundu*<sup>2</sup>.

- [8] In his second ground of appeal, the appellant has argued that the assessment of damages is normally referred to the Registrar or Deputy Registrar while a judge restricts himself to

the aspect of liability. In the current appeal, the learned trial judge proceeded to pronounce herself on the aspect of assessment in the absence of enough evidence. The learned trial judge should therefore have referred the aspect of assessment to the Registrar or Deputy Registrar. In concluding his argument on the second ground of appeal, the appellant lamented that the learned trial judge did not take into account the sum of K2,250.00 which he had given the deceased family as compensation. He accordingly urged us to allow the appeal on both grounds.

**Consideration of the matter and the decision of this Court**

[9] Both parties did not appear when the appeal was heard. The appellant filed a notice of non-attendance. The respondent did not file any heads of argument nor did he file a notice of non-attendance. We shall begin with the second ground of appeal as it touches on the jurisdiction of the trial judge in relation to making assessments. We should immediately dispel the notion that a judge has no jurisdiction to make assessments. We say so because under Article 134 of the Constitution Amendment

Act No. 2 of 2016, the High Court has, subject to Article 128 unlimited and original jurisdiction in civil and criminal matters.

Section 4 of the High Court Act gives a Judge of the High Court power, authority and jurisdiction in respect of the Act.

Section 4 of the High Court Act states that:

*“4. Subject to any express statutory provision to the contrary, all Judges shall have and may exercise, in all respects, equal power, authority and jurisdiction, and, subject as aforesaid, any Judge may exercise all or any part of the jurisdiction by this Act or otherwise vested in the Court, and, for such purpose, shall be and form a Court.”*

[10] These powers under section 4 are quite wide and in our view include power to assess damages after a trial. The judge may however in certain cases where he deems it fit, refer the question of assessment of damages to the Deputy Registrar

The Registrar on the other hand derives his power from Order 3 rule 3 of the High Court Rules Cap 27 which reads as follows:

*“3. The Registrar may transact all such business and exercise all such authority and jurisdiction in respect of the same as*



*under the Act or these Rules may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters, that is to say:*

- (a) All matters relating to criminal proceedings or to the liberty of the subject;*
- (b) Appeals from District Registrars;*
- (c) Injunctions*
- (d) Reviewing taxation of costs, save as provided in O XL, rules 3 and 4. (As amended by No.309 of 1960)."*

[11] Order 3 rule 3 does not therefore give exclusive jurisdiction in respect of assessments to the Registrar or Deputy Registrar.

We therefore reject the argument by the appellant, that the assessment should have been referred to the Deputy Registrar.

[12] The first ground of appeal attacks the judgment of the High Court for awarding excessive damages. There are two types of damages to be considered in respect of this head of argument.

The first type of damages relates to damages for loss of expectation of life and the second type of damages relates to special damages.

[13] In *Litana v Chimba and Another*<sup>1</sup> we held that damages for loss of expectation of life should be moderate as has been argued by the appellant. In the case of *Konkola Copper Mines and*

*Zambia State Insurance Corporation Limited v John Mubanga Kapaya (as Administrator of the Estate of the late Geoffrey Chibale) and other Administrators*<sup>3</sup> we awarded K5,000.00. In the case of *C.R. Holdings Limited, Cassius Rumsey v Jennipher Lintini (Administratrix of the estate of Amarah Doran Lintini)*<sup>4</sup> we awarded K15,000.00 for loss of expectation of life. It is quite clear to us that the award of K50,000.00 which the High Court awarded for loss of expectation of life was on the high side. The *Lintini* case was decided less than a year ago. We see no need to depart from it drastically. We therefore agree with the appellant that the amount awarded by the High Court for loss of life was excessive. We accordingly set it aside and in its place award the respondent K17,000.00 after taking into account inflation.

- [14] We reject the argument by the appellant that the evidence on which to base an assessment for special damages was not enough. A perusal of the record of appeal shows that the respondent kept a record of all the expenses in connection with the funeral. The pleadings also show that the respondent

had claimed special damages in respect of funeral expenses which when added up come to the sum of K28,519.00. However, a closer scrutiny of the special damages claimed in respect of funeral expenses shows that the expenses appear to be excessive. For instance, on 5<sup>th</sup> January, 2014 which was a day after the deceased died, the respondent bought 42kg of beef, 38.3kg of beef sausages and 75kg of pork in the sum of K3,500.00. The following day he paid for 130kg of beef, 75kg of beef sausages, 80kg of pork and 30 chickens which came to K8,540.00. We recognize that funerals tend to draw large crowds of mourners but expenses must be within reason regardless of the tragic circumstances which led to the death of the deceased. We shall therefore interfere with the award of K28,519.00 and reduce the amount which was awarded for beef, beef sausages, pork and chickens by half. We shall also interfere with the award of K1,800.00 as transport for relatives and exclude it completely as this is an expense which should be borne by relatives who come to mourn. This leaves a total sum of K20,699.00 as special damages. The appellant has argued that the trial judge did not take into account the sum

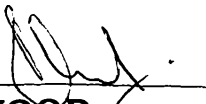
of K2,250.00 which he paid as compensation. We have not seen proof of this payment. It cannot therefore be considered as having been paid and that it should go towards reducing his liability.

**Conclusion**

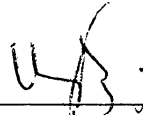
[15] The appeal succeeds to the extent we have stated in the preceding paragraphs. The award of K78,519.00 is set aside and in its place we award K37,699.00 together with interest at the short term deposit rate from the date of the writ to the date of this judgment and thereafter at the average lending rate as determined by Bank of Zambia up to date of full payment. The Appellant and the estate of the deceased shall bear their respective out of pocket expenses both here and in the court below.



**E.M.HAMAUNDU**  
**SUPREME COURT JUDGE**



**A.M.WOOD**  
**SUPREME COURT JUDGE**



**J.CHINYAMA**  
**SUPREME COURT JUDGE**