

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(CIVIL JURISDICTION)

2008/HP/190

BETWEEN:

**KALINDA KAPASA (Suing as Administratrix of
the estate of the late Justine Maambo)**

Plaintiff

AND

WIGA TWABI

KABALA KISEMBO

MADISON GENERAL INSURANCE COMPANY

ZAMBIA LIMITED



1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

Before:

Hon. KM Walubita

For the Plaintiff

:

Emmanuel Bwalya of

Mambwe Siwila & Lisimba Advocates

For the 1st defendant

:

Messrs Okware of Messrs Okware & Associates

For the 2nd defendant

For the 3rd defendant

JUDGMENT ON ASSESSMENT

Legislation referred to:

1. The Fatal Accidents Acts 1846 to 1908
2. The Law Reform (Miscellaneous Provisions) Act 1934

Cases referred to:

1. Elijah Bob Litana v Bernard Chimba and the Attorney General, (1987) Z.R 26 (S.C)
2. Konkola Copper Mines PLC, 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 233
3. Zambia State Insurance Corporation and Zambia Consolidated Copper Mines V. Muchili, (1988/1989) Z.R 132
4. Kabanga and another v Kasanga (1990-1992) Z.R 145
5. Attorney General v Jumbe (1995-1997) Z.R 105
6. Kabwe International Transport and another v Matthews Njelekwe (1998) Z.R 68
7. Betty Kalunga v Konkola Copper Mines Plc (2004) Z.R 40
8. Konkola Copper Mines Plc and another v John Mubanga Kapaya and Others (2004) Z.R 233

This matter came before court by way of a Writ of Summons dated 25th February 2008 in which the Plaintiff sought the following reliefs.

1. Damages under the Fatal Accidents Act 1846 to 1908 arising from an accident involving Toyota Hiace Motor Vehicle Reg. No. ABG 5759 which occurred on or about the 10th of September, 2007.
2. Refund of funeral expenses
3. Interest at current Bank lending rate.
4. Further or other relief the Court may deem fit.
5. Costs

Damages were assessed by the Deputy Registrar on 27th July 2011, however the defendant appealed and the Supreme Court ordered reassessment by a different Deputy Registrar.

The summary of the case is that the plaintiff sued as Administratrix of the estate of the late Justice Maambo who died in a fatal road traffic accident which occurred on 10th September 2007. The late Justice Maambo who was then 21 years of age was a pedestrian who met his fate as he attempted to cross the new Mumbwa road near Garden House in Lusaka. He was hit by an oncoming Toyota Hiace, motor vehicle registration number ABG 5759 which was driven by the 1st Defendant. The vehicle was owned by the 2nd Defendant.

It was the Plaintiff's claim that the accident was caused by the 1st Defendant's careless and negligent driving. The particulars of negligence were as follows:

- i) Failure to take reasonable care not to harm or injure various road users including inter alia Pedestrians.
- ii) Failure of the driver to observe his duty of care to drive carefully on the road so as to avoid Road Traffic Accidents.
- iii) Breaching of the duty of care he owed to other road users at the time he was driving carelessly
- iv) Driving carelessly on the road thus causing panic, uncertainty and fear to other road users.
- v) Failing to apply brakes in order to avoid the accident.
- vi) Failing to give warning or sufficient warning to other road users in order to avoid the accident.

The Plaintiff was the only witness called and said she remembered swearing an affidavit and wanted it to be part of her evidence. She said Justice Mambwe was her nephew who was 21 years old at the time. It was September 2007 and he was still at school in Grade 9 at Kabwata Basic School.

She said that she wanted the person who caused the death of her nephew to compensate for loss of life and expenses spent during the funeral. She said post-mortem was done and the body was taken to Monze for burial. The coffin

was bought, including the feeding of the people at the funeral. The bigger expense was buying of a cow and then other small items. She has no receipts for the cow because there were no receipts in the village in Monze West Bweenga area. The village is 48km from Monze town where the body and people from Lusaka were transported to. She said a bus and a van were hired to carry the coffin and mourners. The total funeral expenses were K4,000 in new currency.

For the loss of life they seek monetary form though it really can't compensate but he would have done a lot. They seek K60,000.

The defendant was not disputing liability but merely disputing the amount that was initially awarded hence this reassessment of damages.

The Plaintiff claims damages for loss of expectation of life under the Law Reform (Miscellaneous Provisions) Act Chapter 74 of the Laws of Zambia as well as under the Fatal Accidents Acts 1846.

In the case of **Elijah Bob Litana v Bernard Chimba and the Attorney General (1)** the Supreme Court gave guidance on claims under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act as follows:

1. A claim under the Fatal Accidents Act is a claim on behalf of the dependents for the loss arising to them out of the death of the deceased. This usually takes the loss of the anticipated earnings of the deceased.
2. An award under the Law Reform (Miscellaneous Provisions) Act is for the benefit of the estate of the deceased, and includes funeral expenses and damages for the loss of the deceased's expectation of life.

In the case of **KONKOLA COPPER MINES PLC AND ZAMBIA STATE INSURANCE CORPORATION LIMITED V JOHN MUBANGA KAPAYA & OTHERS (2004) Z.R. 233**, the Supreme Court explained the concept of "loss of expectation of life" under the Law Reform as being: "a head of damage when claimed on behalf of the estate of the deceased and it is law that such an award is by a small sum In the case of **LITANA V CHIMBA AND ATTORNEY GENERAL (1987) Z.R 26** where this court awarded K1,500,000=00 for loss of expectation of life, the court gave the following:-

We feel it is our duty to give guidance to Courts dealing with awards after 3rd October, 1985. Without taking into account any future serious fluctuations in the value of the kwacha after the date of this judgement (a matter which will have to be considered in future decisions), we recommend that the proper award of damages for loss of expectation of life, regardless of the age of the deceased, should be K3,000,"

Since the LITANA Case, the Supreme Court has gradually increased the award for loss of expectation of life as follows:

1. **K3,500 in ZAMBIA STATE INSURANCE CORPORATION LIMITED AND ANOTHER v MUCHILI (1988 – 1989) Z.R 149;**
2. **K25,500 in KABANGA AND ANOTHER v KASANGA (1990-1992) Z.R. 145;**
3. **K300,000 in ATTORNEY GENERAL v JUMBE (1995-1997) Z.R. 105;**
4. **K1,000,000 in KABWE INTERNATIONAL TRANSPORT AND ANOTHER v MATHEWS NJELEKWE (1998) Z.R. 68.**
5. **K5,000,000 in BETTY KALUNGA (SUING AS ADMINISTRATOR OF THE ESTATE OF THE LATE EMMANUEL BWALYA) v KONKOLA COPPER MINES PLC, (2004) Z.R.40.**
6. **K5,000,000 in KONKOLA COPPER MINES PLC AND ANOTHER v. JOHN MUBANGA KAPAYA AND OTHERS (2004) Z.R. 233.**

In the case before me, after taking into account the fluctuations in the Kwacha, I consider an award of K10,000.00 as adequate for the loss of expectation of life. I accordingly award that sum to the Plaintiff.

The Plaintiff further claims the following as funeral expenses refund:

1.	Coffin	K 250.00
2.	Transportation of the body to the village (Monze)	K1,800.00
3.	Mealie meal 4 bags @ K45.00	K 180.00
4.	Cooking oil 20 litres @ K120.00	K 120.00
5.	2 bags of cabbages @ K50.00	K 100.00
6.	25kg of kapenta @ K150.00	K 150.00
7.	10kg of salt @ K30.00	K 30.00
8.	1 cow @ K1,300.00	K1,300.00
9.	1 box of tomatoes @ K25.00	K 25.00
10.	1 pocket of onions @ K15.00	K 15.00
11.	Body embalmment	K 300.00
12.	Blanket and bed sheets @ K180.00	K 180.00
13.	Transport during preparation of the body (Police, UTH and home)	K 200.00
14.	Post-mortem report	K 30.00
15.	Appointment of Administrator	K 30.00
16.	Burial permit	K 30.00

TOTAL

K4,810.00

I have found that the items listed above are directly related to the funeral. The said expenses are in my view not unreasonable despite there being no receipts. I accordingly award K4,810.00 as funeral expenses.

All the awards shall carry interest at Bank of Zambia long term deposit rate from the date of the writ to the date of Judgement and thereafter at the short term deposit rate until full payment.

Costs are awarded to the Plaintiff to be taxed in default of agreement.

Delivered this.....th 26 day of April.....2018.



Katrina Maimbolwa Walubita
REGISTRAR

