

**IN THE COURT OF APPEAL OF ZAMBIA**  
**HOLDEN AT NDOLA**  
(Civil Jurisdiction)

**CAZ APPEAL NO. 144/2019**



BETWEEN:

**VINCENT HING'ANDU**

**1<sup>ST</sup> APPELLANT**

**MAZHANDU FAMILY BUS SERVICES LIMITED**

**2<sup>ND</sup> APPELLANT**

**PHOENIX OF ZAMBIA ASSURANCE COMPANY LIMITED**

**3<sup>RD</sup> APPELLANT**

AND

**LYNDA MATAKA** (Suing as Administrator for the  
Late Misozi Mataka (Deceased) and Lowani Mataka  
(Deceased))

**1<sup>ST</sup> RESPONDENT**

**FANTASY MUNKASU**

**2<sup>ND</sup> RESPONDENT**

**LUYANDO MUNKASU** (A Minor Suing by  
her Father and Next Friend)

**3<sup>RD</sup> RESPONDENT**

**CORAM: KONDOLO SC, CHISHIMBA AND MULUNGOTI JJA**

**On 26<sup>th</sup> August, 2020 and on 16<sup>th</sup> December, 2021**

*For the Appellants : Messrs. Chipanzhya & Company*

*For the Respondents : Ms. J. Mutemi of Theotis Mataka and Sampa Legal  
Practitioners*

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## **J U D G M E N T**

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**KONDOLO SC, JA** delivered the Judgment of the Court

CASES REFERRED TO:

- 1. Kabanga & Kajema Construction Co. Ltd v Kasanga (1990/1992) Z.R. 145**
- 2. Litana v Chimba and the Attorney General (1987) Z.R. 26**

3. **Konkola Copper Mines Plc, Zambia State Insurance Corporation Limited v John Mubanga Kapaya (as Administrator of the estate of the late Geoffrey Chibale) (2004) Z.R. 233**
4. **Mallet v McMonagle (1970) AC 166**
5. **Phillip Mhango v Ngulube and Others (1983) Z.R. 61**
6. **Orman Corrigan (suing by his next friend) Albert Corrigan v Tiger Limited and Abdi Junale (1981) Z.R. 60**
7. **Sichula and another v Chewa (2000) Z.R. 124**
8. **Watson Nkandu Bowa (suing as Administrator of the estate of Ruth Bowa v Fred Mubiana and another Selected Judgment No. 21 of 2012.**
9. **Zambia State Insurance Corporation, Zambia Consolidated Copper Mines v Muchili (1988/1989) Z.R. 132**
10. **Patrick Dickson Ngulube v Robson Malipenga SCZ Judgment No. 3 of 2015**
11. **Reuben Nkomanga v Dar Farms International Limited SZC Judgment No. 25 of 2006**
12. **CR Holdings Limited v Mary Musonda CAZ Appeal 71/2019**
13. **CR Holdings Limited, Cassius Rumsey v Jennipher Linitini (Administratrix of estate of Amrah Doran Linitini) SCZ Judgment No. 9 of 2019**
14. **Kabwe International Transport Limited and Madison Insurance Company (ZS) Ltd v Mathews Njelekwe (1998) SJ 46**
15. **Reba Industrial Corporation Limited v Nicholas Mubonde CAZ Appeal No. 6 of 2017**
16. **Mukula Highway Transport v Chiwala SCZ Appeal No. 25 of 2006**
17. **Stanley v Saddique [1991] 2 WLR 459**

LEGISLATION REFEREED TO:

1. **The Fatal Accidents Act 1846**



**2. The Law Reform (Miscellaneous Provisions) Act, Chapter 74, Laws of Zambia**

**1. INTRODUCTION**

1.1. This is an appeal against a Judgment on Assessment of Damages delivered by Registrar-Chambers A.M. Chulu on 29<sup>th</sup> May, 2019.

1.2. When hearing this case, we sat as a panel of three Judges but our sister, Mulongoti JA, as she then was, has since ascended to the Constitutional Court. This is the majority decision of the Court.

**2. BACKGROUND**

2.1. The backdrop to the assessment is that on 31<sup>st</sup> January, 2017, a road traffic accident (“RTA”) occurred in which a bus, Higer (PSV) Registration No. ALZ 3197 belonging to the 2<sup>nd</sup> Appellant and driven by the 1<sup>st</sup> Appellant, lost control and collided into a Freightliner truck Registration No. ACM 1160/ACV 4287T. Misozi Mataka, Lowani Munkasu and Luyando Munkasu were passengers in the bus but

unfortunately Misozi and Lowani lost their lives whilst Luyando sustained injuries.

2.2. The Respondents (Plaintiffs in the High Court) commenced an action by Writ of Summons in which they sought the following from the Appellants (Defendants in the High Court);

**1. Damages under the Fatal Accidents Act 1846;**

**2. Damages under the Law Reform (Miscellaneous Provisions) Act;**

**3. Special damages amounting to K283,866.50;**

**4. Damages for personal injury and loss;**

**5. Damages for pain and suffering;**

**6. Damages for loss of dependency amounting to K3,000,000.0;**

**7. General damages for negligence.**

2.3. Before trial could commence, the Parties entered into a Consent Judgment on 4<sup>th</sup> June, 2018 in which the Appellants admitted liability as follows:

**1. That Judgment be and is hereby entered in favour of the Plaintiffs and against the Defendants for**

**damages and interest as claimed in the Writ of Summons and Statement of Claim which Damages shall be assessed by the Deputy Registrar.**

**2. That the liability of the 3<sup>rd</sup> Defendant only shall not exceed the amount covered and available under the policy of insurance evidenced by certificate of Motor Insurance No. 016004 relating to Higer Bus registration Number ALZ 3197.**

**3. That the matter is hereby referred to the Deputy Registrar for assessment of damages.**

**4. Costs shall be for the Plaintiffs to be taxed in default of Agreement.**

2.4. On 19<sup>th</sup> November, a Notice of Appointment of Assessment of Damages was filed accompanied by an Affidavit in support and was heard by the Registrar-Chambers Mrs. A Chulu.

2.5. At the hearing, the 2<sup>nd</sup> Respondent Fantasy Munkasu was called as PW1. He testified that his wife Misozi Munkasu and daughters Lowani Munkasu and Luyando Munkasu were involved in the RTA in which only Luyando survived.



According to him, his wife owned two businesses, Mingo's Catering, which yielded K15,000 per month and Misozi Catering which supplied cakes on a daily basis.

- 2.6. He stated that Luyando spent 4 days in a coma and was later evacuated to South Africa where she underwent 4 operations and was hospitalized for seven (7) weeks. PW1 said he travelled with her and spent over USD6,000 on air fares in August and November 2017, and he accompanied her on subsequent trips for review and reconstructive surgery.
- 2.7. He stated that her operations involved removing a piece of her skull to allow her brain to expand and the piece was replaced in a later operation. A third operation was undertaken to align her jaws and teeth and a forth one to insert an artificial eye socket to replace her original one which was shattered. He told the court that he had to nurse his daughter to health and she, at only 14 years old, cannot do any sport at school and suffers from periodic headaches.
- 2.8. PW2 was the 1<sup>st</sup> Respondent Lynda Mataka who testified with regard to the claim for special damages which encompassed

funeral expenses in respect of the two deceased persons. She was unable to produce any receipts to fully support the funeral expenses.

2.9. She generally regurgitated the evidence given by PW1 with regard to the expenses for air fares and accommodation and transport costs incurred by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to and in South Africa and with regard to the businesses operated by the deceased Misozi Munkasu, who she described as the sole bread winner. In cross examination she admitted that there were no receipts for Hotel accommodation, fuel, meals, airfares and transportation of the bodies from Kabwe to Lusaka but stated that the costs were nonetheless tabulated.

2.10. The 3<sup>rd</sup> Appellant averred that there were other passengers on board the bus who lost their lives and it had discharged its liability under the insurance cover of about K294,500 and the only available balance on the insurance policy which could be paid to the Respondents was K55,500.

### 3. JUDGMENT ON ASSESSMENT

3.1. The Registrar awarded damages under the **Fatal Accidents Act 1846** and the **Law Reform (Miscellaneous Provisions) Act** and cited several authorities. She tackled the heads as pleaded starting with damages under the **Fatal Accidents Act**. Citing the case of **Kabanga & Kajema Construction Co. Ltd v Kasanga** <sup>(1)</sup> on expectation of life and taking into account the ages of the deceased as well as the effect of inflation, she awarded the following damages;

1. Damages under the **Fatal Accidents Act of 1864**

Misozi Munkasu	30,000
Lowani Munkasu	30,000

2. Damages under the **Law Reform (Miscellaneous Provisions) Act Chapter 74**

Misozi Munkasu	15,000
Lowani Munkasu	15,000

3. Special Damages 300,000

4. Damages for personal Injuries & Loss 200,000

5. Damages for pain and suffering

For Luyando Munkasu	500,000
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6. Damages for loss of dependency



For the 2 <sup>nd</sup> Plaintiff	10,000
For Luyando Munkasu	200,000
7. General Damages for Negligence	
Misozi Munkasu	100,000
Lowani Munkasu	100,000
<b>TOTAL</b>	<b><u>K1,500,000</u> (with interest)</b>

#### **4. THE APPEAL**

4.1. The 1<sup>st</sup> and 2<sup>nd</sup> Appellants have now appealed against the Judgment on 7 grounds, namely:

1. That the award of damages under the Fatal Accidents Act 1846 in the sums of K35,000 and K30,000 is both excessive and outrageously high and ambiguous.
2. The award of damages in the sum of K15,000 under the Law Reform (Miscellaneous Provisions) Act, Chapter 74 of the Laws of Zambia both excessive and outrageously high.
3. That the award of Special damages in the sum of K300,000 is excessive and was not supported by

evidence before the Honourable Court and was also speculative as the Honourable Court did not adequately pronounce itself on the applicable rate of inflation.

4. That the award of damages for Personal Injuries and Loss in the sum of K200,000 was both excessive and speculative as the Honourable Court did not consider any evidence of any degree of permanent disability.
5. That the award of damages for Pain and Suffering in the sum of K500,000 was both excessive and outrageous and was not supported by any evidence of degree of permanent disability.
6. That the awards of damages for loss of dependency in the sums of K10,000 and K200,000 is excessive and outrageous and did not take into account the principle and formular of the multiplier and the multiplicand.

**7. That the awards of damages for negligence in the two (2) sums of K100,000.00 was both excessive and outrageous and speculative as the Honourable Court did not adequately pronounce itself on the applicable rate of inflation.**

## **5. THE APPELLANTS' ARGUMENTS**

5.1. The Appellants filed heads of argument in which they contended, in ground 1, that at page J17 of the Judgment, the awards under the **Fatal Accidents Act** of K35,000 were at variance with those on page J31 pegged at K30,000 which renders them ambiguous. They noted that the lower Court despite referring to the case of **Kasanga** and **Litana v Chimba and another** <sup>(2)</sup>, did not state that it had subjected the evidence before it to a qualitative evaluation before arriving at the respective awards.

5.2. It was argued in that regard that the **Kasanga Case** states that rather than making a global award the appropriate course of action is to allocate the damages between the **Fatal**



**Accidents Act** and the **Law Reform (Miscellaneous Provisions) Act** whilst accounting for inflation. It was pointed out that on the other hand, the **Litana Case (supra)** determined that the proper award of damages for loss of expectation of life regardless of age of the deceased should be K3,000.

5.3. Counsel observed that the lower Court did not consider the rate of inflation between 1987 to the date of Judgment and how that should affect the awards. We were directed to the case of **Konkola Copper Mines Plc, Zambia State Insurance Corporation Limited v John Mubanga (as Administrator of the estate of the late Geoffrey Chibale)** <sup>(3)</sup> with regard to inflation.

5.4. It was then submitted that in the case of **Mallet v McMonagle** <sup>(4)</sup>, awards under the **Fatal Accidents Act** are arrived at by multiplying a figure assessed as the amount of the annual dependency by the number of “years purchase”. The starting point, as stated by Lord Diplock, is that any estimate of the number of years that a dependency would

have endured, is the number of years between the date of demise and the date at which he would have reached normal retiring age. Secondly, that number of years should be reduced to account for the possibility that, for a number of reasons, the deceased might not have reached retirement or might be otherwise disabled from gainful employment. The Appellants relied heavily on the holding in the cited case. All in all, under this ground, we were urged to vary the awards by the Registrar and in their place award K15,000 to each of the deceased.

- 5.5. In arguing ground 2, the Appellants once again drew our attention to the **Kasanga Case (supra)** and argued that even where there is no proof of the exact damage suffered, it is improper to make a global award. That in such circumstances, it is better to allocate the damages between the **Fatal Accidents Act** and the **Law Reform (Miscellaneous Provisions) Act** and to account for inflation. We were invited to consider the arguments outlined under ground 1 and to find that an award of K15,000 for each of



the deceased under the **Law Reform (Miscellaneous Provisions) Act** was excessive and outrageously high, and of the sum K7,000 for each deceased person was proposed as adequate.

- 5.6. In ground 3 it was argued, in line with **Phillip Mhango v Ngulube and Others**, <sup>(5)</sup> that a party claiming special loss must do so with evidence that makes it possible for the Court to determine the value of loss with a fair amount of certainty. We were directed to the evidence of PW1 at pages J6 - J7 of the Judgment of the lower Court which showed that only invoices and no receipts had been exhibited in the Affidavit in support of the Notice of Assessment of Damages. That the funeral and medical expenses were not supported by receipts and that PW2 had equally not exhibited any receipts showing the amounts expended for funeral, accommodation, fuel, meals, airfare or transportation of the bodies.
- 5.7. Notwithstanding the missing information, the lower Court still awarded K300,000 as special damages. Counsel argued that even though the said amount accounted for inflation the



court did not specify the rate of inflation. Counsel stated that the Court was in a position to summon monetary experts from the Bank of Zambia to guide on how inflation impacts the local currency and on how to apply it. Counsel opined that in the absence of the above information the Court's findings were speculative and he proposed an award of K100,000 at most, for special damages.

5.8. In relation to ground 4, it was submitted that the Court must consider the degree of permanent disability. This means that the Court must look at the gravity of the injury and physical disability suffered by a claimant and consider whether there is no possibility that the Plaintiff's body functions will come back to normal.

5.9. The case of **Orman Corrigan (suing by his next friend) Albert Corrigan v Tiger Limited and Abdi Junale** <sup>(6)</sup> was cited in which the Appellant was 24 years old at the time of trial and 27 when the matter went to trial and the High Court gave him a working expectation of 28 to 33 years (multiplier)

with a multiplicand of K6,240 (salary per annum). The Supreme Court reduced the multiplier to 17 years.

5.10. Also cited was the later case of **Roger Scott Miller v Attorney General** <sup>(7)</sup> in which the Plaintiff was 36 years old at the time of the accident and 42 at trial and the Court decided on a multiplier of 12 years. It was thus argued that the lower range of multiplier is usually applied to elderly Plaintiffs or those whose expectation of life has been considerably shortened or to those whose disability though permanent is not serious.

5.11. It was submitted that *in casu* there was no evidence of the degree of permanent disability and the lower Court did not consider the above cited cases when formulating the multiplier in relation to the claimant's age. Once again, Counsel proposed K100,000 as an appropriate and sufficient award for personal injuries and loss.

5.12. Ground 5 attacked the finding of K500,000 for pain and suffering. It was submitted that an award of damages for pain and suffering must be calculated on a weekly basis. That



there was neither evidence nor any suggestion that the honourable Court below considered the award on a weekly basis. It was submitted that K100,000 would have been sufficient under this head.

5.13. In ground 6, the Appellants challenged the awards of K10,000 and K200,000 and stated that they did not take into account the multiplier and multiplicand. The arguments advanced in ground 1 were relied on. It was also pointed out that the case of **Sichula and Another v Chewa** <sup>(7)</sup>, allowed an appellate court to interfere with an award where it is wrong in principle, or where the facts have been misapprehended, or where it is so inordinately high or low that it is plainly a wrong estimate of the damages to which a claimant was entitled. That in the instant case, no principles of law were applied by the Court below to determine loss of dependency and the Court seemed to have adopted a mechanical approach.

5.14. Lastly, it was argued in ground 7 that the finding that Misozi was providing for the family through her business while



Lowani had no future ahead of her was speculative in the extreme and should not have been the basis of an award under the head of general damages for negligence and despite referring to it, the lower Court once again omitted to specify the rate of inflation of the kwacha. An award of K60,000 for each of the deceased was proposed. We were urged to interfere with awards of the lower Court and invited to consider a total award of K569,000.

## **6. THE RESPONDENTS' ARGUMENTS**

6.1. In response to ground 1, the Respondents argued that the difference in the figures was a mere clerical error which can be corrected under the slip rule and no prejudice will visit the Appellant. With regard to the substance of this ground, our attention was drawn to **section 1, Fatal Accidents Act 1846** which makes provision for claims by relatives of the deceased and the case of **Konkola Copper Mines Plc, Zambia State Insurance Corporation Limited v John Mubanga Kapaya (as Administrator of the estate of the late Geoffrey Chibale)** <sup>(3)</sup> which discussed the factors that are taken into

account when awarding damages for loss of dependency, such as the possibility of the deceased dying early or the widow remarrying and the ages of minor dependants.

- 6.2. On the facts, it was argued that the affidavit evidence and that of PW1 showed that Misozi had an average monthly income of K15,000, as shown by the receipts on record. Contrary to the contention that the Court should have applied the standard used in the case of **Mallet v MC Monagle**, the cases of **Konkola Copper Mines Plc, Zambia State Insurance Corporation Limited v John Mubanga (as Administrator of the estate of the late Geoffrey Chibale) (supra)** and **Litana v Chimba** <sup>(2)</sup> are binding. It was submitted that the Court was on firm ground when considering the rates of inflation over the years as guided in **Watson Nkandu Bowa (suing as Administrator of the estate of Ruth Bowa v Fred Mubiana and another** <sup>(8)</sup>

- 6.3. In response to ground 2, it was argued as trite that damages under the **Law Reform (Miscellaneous Provisions) Act** are for loss of expectation of life of the deceased and for the



benefit of the estate. The case of **Zambia State Insurance Corporation & Zambia Consolidated Copper Mines v Muchili** <sup>(9)</sup> was cited in which the Court stated that damages awarded are generally small. In dealing with loss of expectation of life, the case of **Litana v Chimba** <sup>(2)</sup> is instructive. It was submitted on that basis that the lower Court was correct to award K15,000 to each of the deceased for loss of expectation of life.

- 6.4. The arguments in ground 3 centered around the expenses incurred for travel to and from South Africa. It was argued that a travel itinerary is only issued once payment is made and we were urged to take judicial notice of this fact and in this case a total of K11,045 was expended on air fares.
- 6.5. With regard to funeral expenses, it was submitted that the Respondent provided proof of the funeral parlour fees which covered service, transport and the coffin and a total of K21,760 was incurred. The rest of the funeral expenses were tabulated in a spreadsheet marked "**LM-FM 4**". Receipts were not produced but funerals were definitely held and expenses



incurred. It was therefore submitted that in light of the evidence available to the Court below, it should not be faulted for arriving at its findings and subsequent awards.

- 6.6. We were referred to the case of **Phillip Mhango v Dorothy Ngulube and Others** <sup>(5)</sup>, in which the court stated that a party claiming special loss must prove the loss with some evidence which makes it possible for the court to determine the value of the loss with a fair amount of certainty. Further, the case of **Patrick Dickson Ngulube v Robson Malipenga** <sup>(10)</sup> was cited to show that in order to do justice, the Court sometimes fills in the gaps for litigants who take a casual approach to litigation. In so doing, Courts have been driven into making intelligent and inspired guesses on insufficient evidence before them. The Respondents accordingly submitted that the general rule of assessment of damages is that evidence of loss must be presented. However, the cited authorities indicate that, on insufficient evidence, the Courts can fill in gaps and make inspired and intelligent guesses. That the

sum of K100,000 proposed by the Appellants is excessively on the lower side.

6.7. Grounds 4 and 5 were argued together as they both sought to assail the awards of damages for personal injuries on one hand and pain and suffering on the other. The Respondents directed our attention to the case of **Reuben Nkomanga v Dar Farms International Limited** <sup>(11)</sup>, in which awards for damages were classified as follows; pain and suffering; loss of amenities; permanent disability; and loss of future prospective earnings. With regard to the principles upon which damages for pain and suffering must be awarded, the Supreme Court in the cited case stated that it must be calculated on a weekly basis.

6.8. It was submitted that the 3<sup>rd</sup> Respondent was hospitalized for a total of 11 weeks and 2 days. The medical report exhibited as “**LM-FM 2**” shows the injuries that the 3<sup>rd</sup> Respondent sustained and a Report from Sunningdale Hospital which shows that the 3<sup>rd</sup> Respondent sustained head injuries as well as skull and facial fractures. PW1’s evidence also showed

that the 3<sup>rd</sup> Respondent underwent facial reconstruction. On the whole, the 3<sup>rd</sup> Respondent has permanent scars on her forehead, suffers from headaches and is unable to take part in sporting activities. The sum awarded was justified.

6.9. There was no response under ground 6. The gist of the argument in ground 7 was that Misozi was a mother providing for her family while her daughter, aged 12, had a future ahead of her therefore, the lower Court cannot be faulted for awarding K100,000 in respect of each Respondent.

6.10. The Respondents endeavoured to submit against the 3<sup>rd</sup> Appellant. We shall not comment on the submissions for the simple reason that the 3<sup>rd</sup> Appellant did not prosecute their appeal.

## **7. OUR DECISION**

7.1. We have considered the record of appeal and the spirited arguments advanced by Counsel for both parties to whom we remain indebted.



- 7.2. Ground 1 was two-fold. Firstly, it attacked the discrepancy of the award of K35,000 and K30,000 appearing at pages J17 and J31 respectively which in the Appellant's view made the awards ambiguous. Our brief consideration on this issue is that the lower Court, in the final award, made a clear tabulation of the total amounts due to the Respondents under each head and awarded K30,000 to each of the estates. This, as we see it, was a typographical error as the tabulation in the final award is crystal clear.
- 7.3. The second limb of this ground condemned the excessiveness of the awards of K30,000 to each of the deceased and that the lower Court did not state the rate of inflation it used in increasing the sum from the K3,000 awarded in the 1987 case of **Litana v Chimba (supra)** and the K5,000 awarded in the 2004 **Konkola Copper Mines Case (supra)** to the K30,000 it had decided to award *in casu*.
- 7.4. We note that the learned Registrar found as a fact that Misozi was a bread winner whilst Lowani was a minor and she stated that she had considered the effects of inflation and

cited the case of **Manfred Kabanda & Kajema Construction v Joseph Kasanga** <sup>(1)</sup> in awarding the sum of K30,000.

- 7.5. Before we proceed any further, we hasten to state our observation that when the lower Court granted awards under the two cited Acts it did not specify the heads of damages under which they were awarded.
- 7.6. In the case of **CR Holdings Limited v Mary Musonda** <sup>(12)</sup> we had occasion to address damages for loss of dependency under the **Fatal Accidents Act** as well as damages for Loss of expectation of life under the **Law Reform (Miscellaneous Provisions) Act**.
- 7.7. We note that when awarding the sum of K30,000 under the **Fatal Accidents Act** the learned DR relied on cases which dealt with loss of expectation of life. This, in our view, was a misdirection because damages under loss of expectation of life must be awarded under the **Law Reform (Miscellaneous Provisions) Act** whilst damages involving loss of dependency are awarded under the **Fatal Accidents Act**.



7.8. Having clarified the position with regard to the two Acts, we shall begin by addressing ground 2 which falls in the ambit of the **Law Reform (Miscellaneous Provisions) Act** and thereafter proceed to determine grounds 1 and 6 which relate to damages for loss of dependency under the province of the **Fatal Accidents Act**.

7.9. In ground 2, the Appellant has assailed the awards of K15,000 to the two estates as being excessive and outrageous. In **Litana v Chimba (supra)**, the Supreme Court stated that:

*“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.”*

7.10. We also refer to the case of **CR Holdings Limited, Cassius Rumsey v Jennipher Lintini (Administratrix of estate of Amrah Doran Lintini)** <sup>(13)</sup> in which the Supreme Court, in 2019, awarded K15,000 for loss of expectation of life and



referred to previous cases such as **Konkola Copper Mines Plc, Zambia State Insurance Corporation Limited v John Mubanga (as Administrator of the estate of the late Geoffrey Chibale)** <sup>(3)</sup> and **Litana v Chimba** wherein they stated that awards for loss of expectation to life are conventionally low.

7.11. In the case of **CR Holdings Limited, Cassius Rumsey v Jennipher Linitini (Administratrix of estate of Amrah Doran Linitini)** the Supreme Court looked at the exchange rate of the United States Dollar (USD) in 2019 which was about three (3) times more than it was in 2004 when it awarded K5000 in **Konkola Copper Mines Plc Case (supra)**, and found that the sum of K15,000 was appropriate.

7.12. It therefore followed that we too, in 2020, in the case of **CR Holdings Limited v Mary Musonda (supra)** considered the rate of the USD at USD 1 to K20 and found that it was five (5) times more than it was in 2004, we reduced the awards of K200,000 and K100,000 awarded by the DR to K25,000 for loss of expectation of life.

7.13. The award of K15,000 for each of the deceased persons was made in May, 2019. According to the **Bank of Zambia Annual Report 2019, at page 141**, the United States (US) dollar was trading at 1USD to K13. This means that the devaluation of the kwacha against the US dollar was three times the K5,000 awarded in the **Konkola Copper Mines Plc Case (supra)** and we therefore find that awards of **K15,000** at the time of the assessment in the case before us were appropriate and not in any way excessive or outrageous and they are accordingly upheld.

7.14. In ground 1, the Appellant proffered arguments for loss of dependency as well as loss of expectation of life and expressed displeasure with the failure by the learned Registrar to consider the devaluation of the Kwacha. Ground 6 attacked the award of loss of dependency in the sums of K10,000 and K200,00 to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively. It was argued that the said amounts did not consider the principle and formula of multiplier and

multiplicand as the learned DR adopted a mechanical approach.

7.15. It is quite clear that the Judgment on Assessment made no reference to the multiplier or multiplicand when arriving at the sums due on account of loss of dependency.

7.16. In **CR Holdings Limited v Mary Musonda (supra)**, we set out, in considerable detail, how damages under the **Fatal Accidents Act** and the **Law Reform Miscellaneous Provisions Act** should be addressed. In relation to the former we cited the case of **Litana v Chimba (supra)** as follows:

*“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 form of an award in respect of the loss of the anticipated earnings of the deceased.”*

7.17. We further cited the case of **Konkola Copper Mines Plc, Zambia State Insurance Corporation Limited v John Mubanga (as Administrator of the estate of the late Geoffrey Chibale)** in which it was held that damages for loss



of dependency must be given to each specific dependent according to the dependency. The book, **Guide to Damages** was also referred to and its authors state that a dependency claim invariably includes loss of earnings/pension/other income but may also include loss of care and services of a spouse or parent. We further opined that in determining loss of dependency, we needed to consider the age and needs of the dependents who were being looked after by the deceased.

7.18. Further on this subject, we were guided by the Supreme Court's decisions in the cases of **Konkola Copper Mines Plc Case (supra)** and **CR Holdings Limited v Lintini (supra)** in which it was stated that the factors to be considered in assessing loss of dependency are the ages of the minor dependents and the various possibilities that might have affected the deceased if he had not died at that time. For example, he could have still died early from some other causes; the dependents dying early; the possibility of the widow remarrying etc.

7.19. It was explained that the period of dependency for the surviving spouse is the deceased's life expectancy which is the period during which he would have been able to provide dependency or, if shorter, the dependent spouse's life expectancy or the period during which she or the children would have continued to be dependent on the deceased. We then considered the multiplier (life expectancy) and multiplicand and indicated that the multiplicand (income of the deceased), ought to be determined.

7.20. In *casu*, the learned Registrar found that there was no evidence that the deceased Misozi Mataka had an average income of K15,000 per month which was allegedly expended on rentals, school fees and improvement of the business. She however, took cognizance of the fact that the late Misozi was industrious and brought an income to the family and on that basis awarded K10,000 and K200,000 to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively.

7.21. We have examined the Affidavit in support of the Assessment in which various copies of invoices and receipts issued by the

late Misozi Mataka were exhibited. The receipts exhibited show various amounts for various periods between 2012 - 2016. They, however, do not give any indication of how much she made in each month. Some months were accounted for whilst others were not and the most crucial year, 2016, which would have shown the most current state of affairs prior to her death, had receipts only for February, March, April, May, June and August.

7.22. From the legible receipts at pages 206 to 209 of the Record, she earned about K13,000 for the month of February, 2016. In March she earned only K375. In April 2016 she earned about K6,000 while in May she generated K11,875. In June 2016 her income stood at K7,290 and lastly in August 2016, she made K1,534. This makes it difficult to calculate or arrive at a multiplicand.

7.23. We did however state in the case of **CR Holdings v Mary Musonda (supra)** that a Judge can depart from the conventional method of computing the award where there are imponderables. Our reasoning was informed by the case of



**Stanley v Saddique** <sup>(17)</sup> in which such imponderables existed and a lump sum was awarded. Even though the learned Registrar did not say it, in so many words, she did in fact award a lump sum. In the circumstances, we cannot fault her for abandoning the traditional method of computing the damages by using the multiplier and multiplicand.

7.24. However, having regard to the receipts exhibited for the year 2016, we have calculated an average income of at least K3,339.5 per month for the year 2016. From this figure, we firmly believe we can come up with an intelligent guess as the learned Registrar did. On this basis we consider the award of K10,000 to the 2<sup>nd</sup> Respondent as being excessively low. The record may not have shown whether or not the deceased's income went towards rentals and school fees as the Registrar put it. Nonetheless, we believe this was still an income that had been lost. We consider the amount of K10,000 awarded to the 2<sup>nd</sup> Respondent to be excessively low and we thus increase it to K60,000. The award of **K200,000** to the 3<sup>rd</sup>

Respondent for loss of dependency is neither outrageously low nor excessively high and we shall not interfere with it.

7.25. The law, however, provides that where the beneficiaries are the same, any damages awarded under the **Law Reform Act** must be deducted from those awarded under the **Fatal Accidents Act**; See **Zambia State Insurance Corporation, Zambia Consolidated Copper Mines v Muchili** <sup>(9)</sup> where the Supreme Court, after taking into consideration inflation and devaluation of the Kwacha, opted to award a small sum for loss of expectation of life and stated as follows;

***“In Zambia, unlike the present position in England, the Law Reform damages have to be deducted from the Fatal Accidents damages where the beneficiaries are the same, as in this case. It is obviously preferable to deduct a smaller figure. Accordingly, we substitute an award of K3,500.00.***

7.26. *In casu*, we are unable to determine the extent of the benefits of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents out of the estate of Misozi Mataka. We have combed through the Record and

have not seen any material upon on which we can make such a determination to enable a deduction. We are however, alive to the fact that Lowani was a minor and the only beneficiary, at law, was her father, the 2<sup>nd</sup> Respondent. This therefore means that his award of K60,000 under loss of dependency must suffer a deduction of K15,000 being the amount awarded for loss of expectation of life. We therefore deduct **K15,000** from the award of **K60,000**. The total now payable to the 2<sup>nd</sup> Respondent is **K45,000**.

7.27. We further set aside the award of **K30,000** to each estate as this will be a duplicate award under loss of dependency.

7.28. The argument proffered by the Appellants under ground 3 was that, the claim for special damages, though specifically pleaded, was not proved and that being the case, an award of K100,000 would have been appropriate. The Respondents on the other hand claimed they had proved special damages by showing travel itineraries, a spreadsheet of expenses, funeral parlour fees and transport expenses to ferry people and the bodies of the deceased from Kabwe to Lusaka.



7.29. The learned DR awarded K300,000 as special damages which constituted expenses incurred by the family as a result of the accident to include funeral expenses, accommodation, food and travel for the family members. She placed reliance on the case of **Kabwe International Transport Limited and Madison Insurance Company (ZS) Ltd v Mathews Njelekwe** <sup>(14)</sup> in which the Court noted that while it could not take judicial notice of the actual funeral expenses, the Respondent's evidence, in that case, was not seriously controverted and therefore agreed with the hazardous guess made by the District Registrar.

7.30. *In casu*, the Registrar simply stated that it was a fact that the Respondents had to take care of all funeral expenses involving two family members but did not consider the individual expenses when she awarded a global sum. The total amount claimed under special damages was K283,866.50 with the following particulars:

- i) Travel and accommodation expenses to South Africa K132,000;

- ii) Travelling expenses to Kabwe to recover bodies of the deceased K21,187.50; and
- iii) Funeral expenses K130,679

7.31. According to the Record, the 2<sup>nd</sup> Respondent stated that he travelled to South Africa twice and stayed there in excess of seven weeks and that the travel and accommodation expenses amounted to K132,000. It is not disputed that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents travelled to South Africa. We note that the documentation supporting the air travel expenses is scanty and the 2<sup>nd</sup> Respondent asked us to take judicial notice that travel itineraries are only issued after a ticket has been paid for. We are unable to do that because it is not a notorious fact and we are aware that travel itineraries are issued for several other reasons including the for purpose of supporting visa applications.

7.32. Be that as it may, we observe that the 3<sup>rd</sup> Respondent travelled to South Africa on three occasions and we accept that the 2<sup>nd</sup> Respondent travelled with her on all three

occasions. The 1<sup>st</sup> occasion was the initial hospitalization which according to the 2<sup>nd</sup> Respondent resulted in Luyando being hospitalized for a period of 7 weeks. According to the medical report at page 250 of the Record, she was admitted to the ICU at Sunninghill hospital on 3<sup>rd</sup> February, 2017 and discharged on the 10<sup>th</sup> March 2017. This amounts to a period of 35 days.

7.33. According to the 2<sup>nd</sup> Respondent, the 3<sup>rd</sup> Respondent travelled back to South Africa for treatment on two subsequent occasions, in August and November, 2017 (see p. 339 of the Record) and this was not disputed. He claims to have used his own money to pay for his air tickets on those subsequent trips.

7.34. At page 256 of the Record is exhibited a copy of an electronic ticket/Passenger Itinerary Receipt in the sum of K4,255 showing a departure date of 7<sup>th</sup> November and return date of 30<sup>th</sup> November, 2017. This is sufficient proof that the trip was undertaken and that he paid for the ticket. The claim for **K4,255** succeeds.



7.35. The earlier trip in August is only supported by an itinerary found at pages 278 and 285 of the Record. It is also notable that item 10 of the itinerary on page 286 of the Record indicates that the itinerary was auto-cancelled due to lack of ticket. The alleged trip in August cannot be accepted because it is not supported by any reliable document.

7.36. The 2<sup>nd</sup> Respondent is also claiming expenses for accommodation and transport. He has not produced a single receipt or anything whatsoever to enable the court to make an intelligent guess. Likewise, this claim is denied.

7.37. With regard to the funeral services i.e. transporting the bodies from Kabwe to Lusaka and graveside service the tax invoice in relation to Misozi Mataka, at page 276 of the Record, shows the sum of K21,760. No receipts were produced, a fact admitted by the Respondent and the documentation which was adduced did not amount to the sum claimed. Even though no receipts were produced we do accept that the bodies were transported as claimed and we find that the exhibited invoices reflect a fair estimate of the

associated costs for each of the two deceased. We therefore award the sum of **K43,520** for the funeral service.

7.38. With regards to the claim of K130,679 for funeral expenses, no document on the Record supports the claim. It is however, not in doubt that funeral expenses were incurred and not disputed by the Respondent. Under the **Law Reform (Miscellaneous Provisions) Act** such expenses may be awarded where the act of a defendant has given rise to the cause of action and we are, on that basis, inclined to award damages for funeral expenses. The Appellants have not opposed paying damages under this item and proposed the sum of K100,000. The Appellants have not explained how they arrived at the proposed sum whilst the Respondents have urged this Court to fill in the gaps and make an intelligent and inspired guess.

7.39. The Respondents exhibited a statement of expenditure in the affidavit in support of the assessment and found at page 258 of the Record. The Appellants did not file an affidavit in opposition and we therefore find that the exhibited document



provided the lower Court with sufficient material upon which had to make an intelligent and inspired guess and upon doing so, awarded the sum of K300,000 under this head.

7.40. We note that this was a joint funeral hosted at the same venue which we believe cost a lot less than having two funerals. We are thus more inclined to accepting the Respondents own estimate of K130, 679 which we award in place of the K300,000 which is set aside.

The total amounts awarded as special damages is therefore **K4,255** for air travel, **K43,520** for the funeral service and **K130,679** for funeral expenses.

7.41. Grounds 4 and 5 will be determined together. The learned DR awarded K200,000 for personal injuries and loss and K500,000 for pain and suffering both to the 3<sup>rd</sup> Respondent.

7.42. The case of **Reuben Nkomanga vs Dar Farms International Limited** <sup>(11)</sup> is instructive with regard to assessment of damages for personal injuries and that the awards should be classified under the following heads: Pain and suffering; Loss



of amenities; Permanent disability; and Loss of future prospective earnings.

7.43. In our decision in **Reba Industrial Corporation Limited v Nicholas Mubonde**<sup>(15)</sup> we stated that damages for pain and suffering are awarded for pain which the claimant feels consequent to an injury both in the past and in the future. According to **Zambia State Insurance Corporation, Zambia Consolidated Copper Mines v Muchili**<sup>(9)</sup> the level of damages will be contingent on the duration and intensity of the pain and suffering. In the case of **CR Holdings Limited v Mary Musonda**<sup>(12)</sup>, we referred to the 2014 case of **Mukula Highway Transport v Chiwala and Another**<sup>(16)</sup> after taking note of the loss of the claimant's arm with 70% disability, 10% facial disfigurement and 30% total pain during the trauma, the Supreme Court upheld a lump sum award of K180,000 stating that it was not excessive. It is further noted that the principles laid down in the 2006 case of **Reuben Nkomanga v Dar Farms International Limited**<sup>(11)</sup> where a weekly rate was applied, still remain true.

7.44. As guided by the cited authorities, the extent and nature of the victims injuries and the length of hospitalization would determine whether to impose a lump sum or weekly rate. We agree with the DR that the two deceased died instantly and as such there can be no award for damages for pain and suffering.

7.45. It is not in doubt that Luyando Munkasu suffered severe injuries and experienced considerable pain and suffering as a result of which she had to undergo medical procedures for reconstructive surgery. As indicated earlier in this Judgment, the documentary evidence on record only supports a hospitalization period of 35 days (from 3<sup>rd</sup> February, 2017 and to 10<sup>th</sup> March 2017 and 23 days (from 7<sup>th</sup> November to 30<sup>th</sup> November, 2017).

7.46. The Respondents did not avail the lower Court with any documentary evidence with regard to the extent of the injury *vis a vis* her normal day to day life or a percentage of permanent disability.



7.47. The lower Court, despite relying on the case of **Reuben Nkomanga v Dar Farms International Limited** <sup>(11)</sup> awarded damages for both personal injuries and loss and for pain and suffering when the cited case clearly indicates that the two are not separate heads because damages for personal injuries include pain and suffering. The award for personal injuries in the sum of **K200,000** is consequently set aside.

7.48. In considering the sum of K500,000 awarded by the learned Registrar for pain and suffering, we seek succor in the cited cases as well as on our decisions in **Reba Industrial Corporation Limited v Nicholas Mubonde** <sup>(15)</sup> and **CR Holdings Limited v Mary Musonda (Supra)**. In **Reba Industrial Corporation Limited v Nicholas Mubonde** which we decided in 2017 and despite the victim having suffered 100% disability, we did not disturb the award of K250,000.

7.49. *In casu*, given that the extent of the injuries is unknown, we are inclined, in the circumstances, to disturb the award of K500,000 made by the learned DR for being excessive. Applying the principle in **Reuben Nkomanga v Dar Farms**



**International Limited** a weekly rate would have been appropriate.

7.50. In our decision of **CR Holdings Limited v Mary Musonda (Supra)** which we decided in 2020, we fixed the weekly rate at K7,600 after noting that the dollar rate in 1993 was 1USD to K0.5 at a time when the weekly rate was fixed at K200-K300 in **Zambia State Insurance Corporation, Zambia Consolidated Copper Mines v Muchili (supra)**.

7.51. As we write this Judgment, the exchange rate now stands at USD1 to K17 and of late, it has experienced frequent up and down fluctuations. Considering that the **CR Holdings Limited v Mary Musonda** Judgment was only delivered last year, we shall maintain the same weekly rate. The number of days of hospitalization in this case was 58 days which translates into 8 weeks plus 2 days. In this regard, we award the sum of **K65,142.86**.

7.52. There is no material to support an award for loss of earnings for the 3<sup>rd</sup> Respondent who is a minor and was not in employment.

7.53. Lastly in ground 7, the Appellants took issue with the award of K100,000 each, to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent, as general damages. The learned Registrar arrived at this award on the basis of the holding in **Kasamba kalinda and Roy Kalinda v Dr. Saltinov and Teba Medical Centre** <sup>(20)</sup> in which the High Court Judge (as I then was) found liability for negligence resulting in loss of life.

7.54. In this matter, the Respondent primarily sought relief under the **Fatal Accidents Act** and **Law Reform (Miscellaneous Provisions) Act Chapter 74** and the learned Registrar awarded various reliefs under the heads that fall under the respective Acts. The arguments advanced by the Appellants and the Respondents under this head, relate to loss of life and the incidental benefits which were already considered and determined under the other heads. *In casu* there is no scope for awarding additional relief under the head of general damages which is not provided for.

7.55. We reiterate the guidance provided by the Supreme Court in the case of **Reuben Nkomanga v Dar Farms International**

**Limited** <sup>(11)</sup> which set out the classification of heads under a claim for personal injuries. Further, we have addressed the damages available under the **Fatal Accidents Act**. Accordingly, we find merit in this ground and set aside the awards under general damages.

## 8. CONCLUSION

8.1. For avoidance of doubt, our decision is as follows;

1. The awards of K30,000 to each of the deceased awarded under the **Fatal Accidents Act** are set aside.
2. The awards of K15,000 for loss of expectation of life are maintained.
3. The 2<sup>nd</sup> Respondent is awarded K45,000 under loss of dependency while the 2<sup>nd</sup> Respondent's award of K200,000 is maintained.
4. The awards of K200,000 as damages for personal Injuries & Loss and K500,000 for pain and suffering with respect to the 3<sup>rd</sup> Respondent are set aside. In their place we award the sum of **K65,142.86**.



5. The award of K300,000 as special damages claimed by the 2<sup>nd</sup> Respondent is set aside. In its place we award a total of **K178,454** broken down as follows;
- a. Air travel – K4,255
  - b. Burial expenses - K43,520
  - c. Funeral expenses – K130,679
6. The total amounts awarded to the Respondents shall attract interest at the short-term deposit rate from date of writ to date of Judgment and from the date of Judgment. Thereafter at the current bank lending rates as determined by the Bank of Zambia until the date of full payment.
- 8.2. The net effect is that this Appeal succeeds in part only. Each party shall bear their own costs.

  
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**M.M. KONDOLO SC**  
**COURT OF APPEAL JUDGE**

  
.....  
**F.M. CHISHIMBA**  
**COURT OF APPEAL JUDGE**

.....  
**J.Z.MULONGOTI**  
**COURT OF APPEAL JUDGE**