

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT TABORA**

**(CORAM: MWARIJA, J.A., MWANDAMBO, J.A. And MASHAKA, J.A.)**

**CIVIL APPEAL NO. 51 OF 2018**

**MOHAMED ENTERPRISES TANZANIA LTD ..... APPELLANT**

**VERSUS**

**MUSSA SHABANI CHEKECHEA ..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Tabora)**

**(Mkasimongwa, J.)**

**dated the 27<sup>th</sup> day of October, 2015**

**in**

**Civil Case No. 6 of 2009**

**.....**

**JUDGMENT OF THE COURT**

*22<sup>nd</sup> September, 2022 & 19<sup>th</sup> September, 2023*

**MWARIJA, J.A.:**

The respondent, Mussa Shabani Chekechea who is the administrator of the estate of his late father, Hamisi Chekechea (the deceased) was the plaintiff in the High Court of Tanzania at Tabora. He filed a suit, Civil Case No. 6 of 2009 (the suit) claiming for compensation from the appellant, Mohamed Enterprises Tanzania Limited who was the deceased's employer. Until the time of his death, the deceased was employed by the appellant as a driver at the appellant company's Tabora branch office. On 5/1/2007, he was assigned the duty of driving the appellant's motor vehicle Reg. No. T. 457 ALX, make Isuzu Double

Cabin (the motor vehicle) from Tabora to Urambo to collect his employer's cash amounting to TZS. 70,000,000.00. While on the way back to Tabora, at Igunga area, the deceased, who was with one Athuman Said and another person, Salum Mohamed, a gang of armed bandits emerged from a bush and opened fire on the motor vehicle. As a result of the attack, the deceased sustained bullet injuries which caused his death.

Following the deceased's death, the respondent filed the suit. He claimed for general damages of TZS. 500,000,000.00 contending that, the deceased's death occurred as a result of his employer's negligence, the particulars of which were that; the motor vehicle used by the deceased was not designed to be used to transfer hard cash and further that, the deceased was not provided with armed security guards to escort him to collect the cash. The respondent claimed also for interest and the costs of the suit.

The appellant denied the allegation that the motor vehicle used to collect cash from Urambo was not designed for that purpose and claim that, it failed to provide the deceased with armed security guards to escort him. It contended further that, the claim for damages did not stand because the deceased person's dependant's were paid in terms of

the Workers Compensation Act, 2008 (now Chapter 263 of the Revised Laws).

At the trial in the High Court, each side relied on the evidence of three witnesses. The respondent, who testified as PW1, gave evidence to the effect that, he was the administrator of the deceased's estate, having been appointed by the Tabora Urban Primary Court on 23/5/2008 vide the Probate and Administration Cause No. 54 of 2007. It was his evidence further that, after having been issued with the letters of administration (exhibit P1) he made a follow-up on the compensation payable by the appellant under the workers Compensation Act and through the Regional Labour Officer, Tabora, the dependants were paid a total of TZS. 83,000.00. He found that amount to be insufficient and therefore, decided to file the suit.

Athumani Said (PW3), who, as stated above, accompanied the deceased in the motor vehicle, narrated on how the incident leading to the deceased's death occurred. According to him, while they were returning back from Urambo and after having reached Igunga area, four persons emerged from a bush, two of them wielding firearms and, suddenly, fired bullets at the motor vehicle. The bullets hit him on his back, arm and both legs. Before he became unconscious, he saw the

deceased bleeding from his chest, the indication that he was also shot. As the motor vehicle ultimately stopped, he saw the culprits opening its left hand front door. When he regained consciousness, he noticed that he was at Kitete Hospital.

Another witness, Cyprian Joseph Simba, who was at the material time employed by the appellant as an accountant, testified as PW2. His evidence was to the effect that, on the instruction of his Manager, on 4/1/2007 he made the necessary arrangements for the trip by the deceased to Urambo by going with him to a petrol station to buy fuel for the motor vehicle. He was aware that the deceased was going to Urambo to collect TZS. 70,000,000.00, the proceeds of the sale of soap by the company to its customer, one Salum Mohamed. The witness testified further that, it was the company's practice to collect cash from its customers by motor vehicles, the practice which he had been advising against but according to him, that advice was not heeded to. He recalled that two incidences of robbery involving the appellant's cash in transit had occurred as a result of the same method used to collect money from customers.

PW2's further testimony was that, after the deceased and PW3 had left Tabora for Urambo at 7:30 am, he tracked their trip by

communicating with them through a phone. He had the following information about the trip: The trip went well until when at a certain point while on the way back at Ilolangulu area, he lost contact with them. Later at about 12:20 p.m, his office received information from the police that the motor vehicle had been attacked at Igunga area. He was one of the officials of the company who went to the scene. Together with him, was his Manager, Gururaji Gumatse. At the scene, they found the motor vehicle with bullet holes and blood stains. The deceased and PW3 had already been taken to Kitete Hospital. He went to the said Hospital where he also found the body of the deceased.

As stated above, the appellant also called three witnesses. Testifying for the appellant, Arif Ali (DW1) who became the company's Branch Manager in 2007, succeeding Gururaji Gumatse, who allegedly committed suicide after the incident, disputed the evidence to the effect that PW3 was an employee of the appellant company. According DW1, the office records and the information he received from the former Branch Manager, did not support the contention that PW3 was an employee of the appellant. The witness said that, he was aware that the appellant's customer, Salum Mohamed from whom the amount of TZS 70,000,000.00 was collected, was in the motor vehicle at the time of the

incident and that, he was one of the casualties who were taken to Kitete Hospital for treatment.

The other two witnesses, John Sebastian @ Isihaka (DW2), who was at the material time employed by the appellant as a clerk and No. E 9893 D/SSgt Jafari (DW3), were the persons who went to the scene immediately after the incident. They gave evidence on what they found at the scene. According to them, the deceased had died and his body was still on the driver's seat. They said that, two persons, PW3 and Salum Mohamed, who were in the motor vehicle, were also injured.

In its judgment, the trial court found that, the appellant owed the deceased the duty of care and thus by failing to provide him with armed security guards when he went to collect the money using the motor vehicle which was not designed for money transfer business, the appellant was liable for negligence. With regard to the appellant's contention that the deceased knew the risks involved but went to collect cash using the motor vehicle without escort and in addition, had carried a passenger in it, and thus contributed to the cause of his death, the learned trial Judge dismissed that defence. He observed that, neither is the *defence of volenti non fit injuria* nor did that of contributory negligence applied in the circumstances of the case.

On the quantum of damages, the trial court considered the fact that, as a result of the incident, the family lost their father whom they wholly depended on. It awarded TZS. 100,000,000.00 with interest at the rate of 7% from the date of judgment to the date of satisfaction of the decree as well as the costs of the case.

The appellant was aggrieved by the decision of the High Court hence this appeal which is predicated on the following five grounds of appeal.

- "1. *The learned Judge erred in law and in fact in holding that the appellant was negligent and thus liable to pay compensation to the administrator of the estate of the deceased.*
2. *That the learned Judge erred in law and in fact in holding that the defence of **volenti non fit injuria** was not available to the appellant.*
3. *That the learned Judge erred in law and in fact in awarding damages to the estate of the deceased while the matter concerned a fatal accident.*
4. *That the learned Judge erred in law and in fact in awarding damages on criteria which were not correct in law.*
5. *That the learned Judge erred in law and in fact in entertaining the suit [while] the respondent did*

*not have any cause of action against the appellant.”*

At the hearing of the appeal, the appellant was represented by Mr. Elisa Abel Msuya assisted by Ms. Neema Mahunga, learned advocates while the respondent had the services of Mr. Mugaya Mtaki, also learned advocate. The learned advocates for the appellant and the respondent duly filed their written submissions in terms of rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules) respectively. They highlighted their submissions orally during the hearing. We thereafter, reserved our judgment to the date to be notified to the parties. Upon consideration of the evidence on the record and the submissions of the learned counsel for the parties however, we found it appropriate, before we arrive at our judgment, to exercise the Court’s discretion under rule 36 (1) (b) of the Rules, to direct the trial court to take additional evidence so as to enable a just determination of the issue arising from the fourth ground of appeal in the event that, the rest of the grounds of appeal fail.

In compliance with the order of the Court dated 21<sup>st</sup> March 2022, the trial court recalled PW1 and PW2 and proceeded to record additional evidence from them on the particular number of the deceased’s



dependants, the wage and other monetary benefits which was being earned by him before his death. According to the evidence certified to the court by the trial court on 22/9/2022, PW1 maintained that, the deceased had ten dependants as shown in paragraph 2 of the plaint.

On his part, PW2 stated in his additional evidence that, the deceased who was also the head of mechanics and a head driver, was earning a gross salary of TZS. 48,000 per month. Since PW2 was the accountant who used to pay the appellant's employees, it was his further evidence that, the deceased was receiving a net salary of TZS. 32,000.00 per month but apart from the monthly salary, he was also receiving TZS. 10,000.00 and per diem of TZS. 15,000.00 per night whenever he travelled on duty out of his work station, the duties which he performed within the average period of ten days of every month.

After that prelude, we now proceed to consider the submissions of the learned counsel for the parties. Submitting in support of the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal, Mr. Msuya argued that, the finding by the High Court that the appellant had breached the duty of care is erroneous. According to the learned counsel, in order for his claim to succeed, the respondent was required to prove that the appellant had breached a

legal duty and that such a breach had resulted into damages on the part of the deceased's dependants.

The learned counsel contended that, from the evidence of DW1 and PW3, it was the practice of the appellant's company to transfer cash using ordinary motor vehicles without the escort of armed security guards. He argued further that, there was not, until the material time, any laid down standards in the form of regulations prescribing how collection of cash from the appellant's customers should be transferred or the particular mode of motor vehicles to be used for that purpose. In his oral submissions, he also disputed the evidence tendered by PW2 that there had happened two incidences in which the appellant's cash in transit was robbed.

Submitting further against the finding that the appellant was negligent, Mr. Msuya argued that, the deceased consented to the risk that resulted into his death and that therefore, the defence of *volenti non fit injuria*, was applicable because, first, as testified by DW3, the appellant company had a regulation which prohibited its drivers from carrying passengers but the deceased person breached that restriction. Secondly, the deceased was aware of the risk involved in using ordinary motor vehicle to transfer cash without being escorted by armed security

guards, yet he consented to the assignment without demanding to be provided with escort. On the basis of those arguments, the learned counsel for the appellant submitted that, the trial court erred in rejecting the appellant's defence.

With regard to the 3<sup>rd</sup> and 5<sup>th</sup> grounds of appeal, the appellant's counsel submitted that, even though the suit was maintainable under ss. 3 and 4(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, chapter 310 of the Revised Laws (the Act), the respondent brought the action as the administrator of the deceased's estate without showing that he was suing on behalf of the dependants. He stressed that, the dependants should have been impleaded so that they would have also testified. He argued further that, the suit was for that reason, untenable because it was brought on behalf of the deceased's estate instead of the dependants. In that regard, Mr. Msuya contended that, the respondent did not have a cause of action against the appellant.

As for the 4<sup>th</sup> ground, the appellant's counsel argued that, the trial court used a wrong criterion to award damages against the appellant. He faulted the learned trial Judge's assessment of damages contending that, he erred in awarding TZS 100,000,000.00 while the same was not

supported by evidence. Amplifying that argument in his oral submissions, Mr. Msuya complained that, the award was based on extraneous matters.

In reply to the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal, Mr. Mtaki argued that, negligence on the part of the appellant was proved. He made reference to the finding of the trial court at page 71 of the record of appeal where the learned trial Judge held *inter alia* that, the risk involved in transferring huge amount of money in the manner done by the appellant was undoubtedly eminent. He supported the finding of the learned trial Judge that, despite the advice of PW2, the appellant did not take reasonable precautions to ensure the safety of the deceased who was performing the duty assigned to him by his employer; that of carrying hard cash from Urambo to Tabora, without the escort of armed security guards.

On the argument that the respondent had consented to the risk, Mr. Mtaki submitted that, such an allegation is not supported by the tendered evidence. Relying on the case of **Donoghue v. Stevenson [1932]** A.C. 562, he argued that, the principle of *volenti non fit injuria* did not, in the particular circumstances of this case, apply. Furthermore, as to the submission that the deceased's act of carrying a passenger had

the effect of exonerating the appellant from liability, the respondent's counsel submitted that, from the evidence of PW2, it was not the passenger who attacked and killed the deceased and therefore, that argument is devoid of merit.

On the 3<sup>rd</sup> and 5<sup>th</sup> grounds of appeal, Mr. Mtaki countered the argument by the appellant's counsel that, since the claim for damages was based on the matter which arose from a fatal accident, the trial court erred because, in essence, it awarded damages to the estate of the deceased. According to the learned counsel, because the appellant's counsel had conceded that the suit was filed by the respondent in his capacity as an administrator of the deceased's estate, these grounds of appeal lack merit. He stressed that, the respondent instituted the case on behalf of the other dependants and thus under s. 4 (1) of the Act, the suit was competent.

Opposing the contention that the award of general damages was based on extraneous matters, he cited the case of **The Cooper Motors Corporation Ltd v. Moshi/Arusha Occupational Health Services [1990]** T.L.R in which, among other matters, the Court pointed out the factors which should be taken into account when a court considers a claim for general damages. He submitted that, in this case the trial court

acted on the evidence of PW1, who filed the suit on behalf of the other dependants of the deceased.

In a brief rejoinder, Mr. Msuya submitted that, the case of **Cooper Motors** (Supra) cited by the respondent's counsel is not applicable to the case at hand because whereas it was not clear as to who were the deceased's dependants, the criteria upon which the awarded damages of TZS 100,000,000.00 was assessed, was not shown. He stressed that, the basis for the grant of general damages is not clear and that therefore, the said amount was wrongly awarded.

We have duly considered the submissions of the learned counsel for the parties. In determining the grounds of appeal, we wish to begin with the 3<sup>rd</sup> and 5<sup>th</sup> grounds which raise the issue whether or not from the nature of the claim, the respondent had a cause of action against the appellant. The gravamen of the complaint by the learned counsel for the appellant is that, because the respondent filed the suit as the administrator of the deceased's estate, the damages were in effect awarded to the estate of the deceased while the claim arose from a fatal accident whereby the damages ought to have been claimed by the dependants or shown to be claimed on their behalf.

With respect to the appellant's counsel, we are unable to agree with him. Under s. 4 (1) of the Act, an action based on a fatal accident may be claimed by an administrator of a deceased's estate. That provision states as follows:

*"4 (1) Every action brought under this part [part II of the Act] shall be for the benefit of the dependants of the person whose death has been caused and shall be brought either by and in the name of **the executor or administrator of the person deceased** or by and in the name or names of all or any of the dependants (if more than one) of the persons deceased".*

*[Emphasis added]*

From the clear wording of s. 4 (1) of the Act reproduced above, we find that the respondent had the option of filing the suit in his capacity as an administrator of the deceased's estate on behalf of the dependants.

The contention by the appellant's counsel that, the respondent did not indicate in the plaint that the claim was made on behalf of the dependants is also not correct. In paragraph 8 of the plaint, the respondent listed the names of ten persons who were described as the members of the deceased's family. Furthermore, as submitted by Mr. Mtaki, in his evidence at page 37 of the record of appeal, the

respondent (PW1) showed that the claim was based on the damages suffered by the dependants by way of *inter alia*, deprivation of basic needs and education expenses for those who were still in school.

One more, point on this. It is not in dispute that the deceased person's dependants were paid a total of TZS 83,000.00 under the Workers Compensation Act, 2008 (now Cap. 263 of the Revised Laws). That did not, however, bar the respondent from preferring a claim for damages. He was entitled to do so by virtue of the provisions of s.30 of the said Act which states as follows:

*"30 – (1) Nothing in this Act shall limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease resulting in the disablement or death of an employee if the injury or disease was caused by the negligence, breach of statutory duty or any other wrongful act or omission of the employer, or any person for whose act or omission the employer is responsible, or any other person.*

*(2) Any damage awarded to an employee or dependant of an employee in an action at common law or any other law in respect of the negligence, breach of statutory duty or other wrongful act or omission of the employer on any other person, shall*



*be reduced by the value of any compensation which has been paid or is payable by the Fund under this Act in respect of the injury, death or disease.”*

For the reasons, which we have stated above, we do not find merit in the 3<sup>rd</sup> and 5<sup>th</sup> grounds of appeal. The same are hereby dismissed.

Turning to the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal, we need not be detained much in answering the arising issue; that is, whether or not the appellant was negligent thus being liable to pay damages to the deceased's dependants. In his judgment at pages 70 – 71 of the record of appeal, the learned trial Judge answered that issue as follows:

*"In my view the answer is yes. It is undoubtedly risky to transfer huge sums of money in terms of hard cash. This is because such a manner of transferring fund suffers, among others, bandit attacks risk ... [PW2] warned the defendant's authorities to use bank facilities instead. It is unfortunate that the warning fell on a deaf ear. Since the deceased was assigned to transfer a bulk sum of cash money from Urambo, the defendant was duty bound to take all reasonable precautions to ensure that he (the deceased) was safe throughout his safari."*

Mr. Msuya's argument is that, for the respondent to succeed in his claim, the appellant must have breached a legal duty of care owed by it

to the respondent. We do not see any difficulty on whether or not that legal duty of care existed. It is not in dispute that the respondent was the employee of the appellant. By that relationship, the appellant owed the deceased the duty of care not to be subjected to risks in the course of performance of his duties. That is a legal duty imposed on the employer. Commenting on the nature of the duty of care by employers to his employees, the learned author of the book **Winfield and Jolowicz on Tort**, 7<sup>th</sup> Edn, London, Sweet and Maxwell, state it at pages 173-4 as follows:

*"In truth, however, there is but one duty, a duty to take reasonable care so to carry on operations as not to subject the persons employed to unnecessary risk. In case there is any doubt about the meaning of 'unnecessary', I would ... take the duty as being a duty not to subject the employee to any risk which the employer can reasonably foresee or, to put it slight by lower, not to subject the employee to any risk which the employer can reasonably foresee and which he can guard against by any measure, the convenience and expenses of which are not entirely disproportionate to the risk involved."*

In support of his argument that the appellant did not owe the deceased the legal duty of care, Mr. Msuya relied on the case of **Winfred**

**Mkumbwa v. SBC Tanzania Limited** Civil Appeal No. 150 of 2018 (unreported). In that case, the Court cited with approval the comment by the learned author of the book **The Principles of Tort Law**, 4<sup>th</sup> Edn., Cavendish Publishing Limited, 2000 at page 25 that:

*"The existence of duty of care depends upon oversight, proximity and other complex factors. It should be noted that in the vast majority of cases, there is no dispute about the existence of duty of care."*

As shown above, because the relationship between the appellant and the deceased was that of an employer and an employee respectively, the stated factors necessary for the appellant to owe the deceased a duty of care, exist. The authority cited by Mr. Msuya supported the respondent's case. In this regard, we subscribe to another comment in

**Winfield and Jolowicz on Tort** (supra) at page 170, that:

*"... the contract between the employer and employed involves on the part of the former the duty of taking reasonable care to provide proper appliances, and to maintain them in a proper condition, and to **carry on his operations as not to subject those employed by him to unnecessary risk.**"*

*[Emphasis added]*

On the contention that the deceased consented to the risk, in the first place, according to the record, no evidence was led to show that the deceased was given the option of deciding to perform the duty assigned to him by his manager or otherwise. Secondly, the deceased's act of carrying a passenger had nothing to do with the cause of the former's death. The attack was made by robbers and from the evidence on record, there was no indication that they had any connection with that passenger. As submitted by Mr. Mtaki, the passenger was one of the persons who were injured thus negating the contention that the deceased had put himself to risk. We find therefore, that the appellant's defence based on the principle of *volenti non fit injuria* is untenable. For these reasons, the 1<sup>st</sup> and 2<sup>nd</sup> grounds also fail. They are accordingly dismissed.

Having dismissed the appellant's complaints in the 1<sup>st</sup> – 3<sup>rd</sup> and 5<sup>th</sup> grounds of appeal, we now turn to consider the 4<sup>th</sup> ground of appeal. In this ground, the appellant challenges the decision of the trial court awarding the respondent general damages of TZS. 100,000,000.00 as compensation to the deceased's dependants. The complaint by the appellant's counsel is that, in awarding the damages, the learned trial Judge acted on a criterion which is not correct in law.

According to the trial court's judgment, the basis upon which the award of TZS 100,000,000.00 was made, is stated at page 75 of the record of appeal where the learned trial Judge stated as follows:

*"I have considered the amount of TZS 500,000,000.00 claimed as compensation. Apart from contending that, the father as bread earner of six children, we **have no evidence from which the amount gets support.** The deceased was a driver. He had been in service for about 6 to 7 years. The plaintiff shows that the deceased depended wholly on the earnings at his work to sustain his family ...."*

*[Emphasis added]*

As correctly observed by the learned trial Judge, evidence on the earnings which the deceased was receiving is lacking. Evidence to that effect was crucial because it is that amount which would have formed the basis of calculating the lost earnings for proper assessment of damages. That principle is stated in case of **The Attorney General v. Roseleen Kombe** (*as the administratrix of the Late Lieutenant General Imran Hussein Kombe, Deceased*), Civil Appeal No. 50 of 2002 (unreported). In that case, the Court cited with approval the following comment by R.F.V Heuston, the learned author of the book **Salmond on the Law of Tort**, 17<sup>th</sup> Edn. at page 585:

*"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lumpsum by taking a certain number of years purchase. That sum however, has to be taxed down by having due regard to uncertainties."*

As shown above, in the case at hand, the respondent's witnesses did not state the wages which were being received by the deceased. Since that piece of evidence was necessary for calculating the lost earnings, it was incumbent for the trial court to invoke O.XVIII r.12 of the Civil Procedure Code, Cap. 33 of the Revised Laws to take additional evidence before it made its decision, having noted that the witnesses did not say anything on that matter. Since the trial court did not do so, given the crucial nature of that evidence, we found it appropriate to exercise our discretion under rule 36(1) (b) of the Rules to direct the trial court to take that important evidence which, as stated above, was certified to the Court.

Coming now to the calculation of the lost earnings. In the case of **Roseleen Kombe** (supra), the Court cited the case of **Taylor v. O'Connor** [1971] A.C 115 at page 140 where it is stated that:

*"There are three stages in the normal calculation, namely (1) to estimate the lost earnings, that is, the sum which the deceased probably would have earned but for the fatal accident; (2) to estimate the lost benefits, that is, the pecuniary benefits which the dependants probably would have derived from the lost earnings, and to express the lost benefits as an annual sum over the period of the lost earning; (3) to choose the appropriate multiplier which, when applied to the lost benefit expressed as an annual sum gives the amount of the damages, which is a lumpsum."*

From the additional evidence, the respondent was earning a net salary of TZS 32,000.00 and allowances of TZS. 250,000.00 per month. The figures were not disputed by the appellant. He was thus earning a total of TZS 282,000.00 per month or TZS 3,384,000.00 per annum. It is this evidence that the High Court should have considered. The amount which was awarded by the trial court as damages without following the laid down principles stated above was, for that reason, erroneous.

The additional evidence has established the earnings which were being received by the deceased. It is thus clear that the requirement in

the first stage of assessment of damages has been met. As for the second stage, the period within which the dependent's lost the benefits was between 05/01/2007 when deceased died and 27/10/2014 when the suit was determined, that is a period of seven years and nine months. In total the dependants lost the benefits to the tune of TZS 26,226,000.00.

Coming to the third stage, the evidence as regards the amount which was used for the upkeep and other expenses such as education costs for the dependents who were schooling, was not tendered. There was also no evidence showing the amount used by the deceased for his own personal expenses. We however, think that since the amount of the lost benefits has been established, that amount can be conveniently apportioned to the ten dependants after subtracting the amount equal to one tenth of the total sum as the deceased's personal expenses and TZS. 83,000.00 paid to the dependants under the Workers Compensation Act. In our considered view, the apportionment of the remaining amount of TZS 23,520,400.00 will meet the ends of Justice in the circumstances of this case.

In the event, this ground of appeal partly succeeds. The amount of TZS 100,000,000.00 awarded to the respondent by the trial court as



general damages is set aside and substituted with a sum of 23,520,400.00 to be equally shared by the ten dependants of the deceased. The amount shall attract interest at the court's rate from the date judgment of the trial court to the date of full satisfaction of the decree.

The appellant shall bear the costs.

**DATED at DAR ES SALAAM** this 13<sup>th</sup> day of September, 2023.


A. G. MWARIJA  
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

L. L. MASHAKA  
**JUSTICE OF APPEAL**

The Judgment delivered this 19<sup>th</sup> day of September, 2023 in the presence of Ms. Irene Mchau, learned counsel for the Appellant through Video Link from Dar es Salaam and Mr. Mgaya Mtaki, learned counsel for the Respondent through Video Link from Tabora, is hereby certified as a true copy of the original.



  
C. M. MAGESA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**