THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

CIVIL APPEAL NO. 07 OF 2018

(From the Resident Magistrate's Court of Mbeya at Mbeya in Civil Case No. 03 of 2017)

DR. LOY JOB MBWILO

(As Administratix of the Late AMIN AMAN MBALA).....**APPELLANT**

VERSUS

RICHARD MWERA MATIKU.....**1ST RESPONDENT**

ICEA LION GENERAL INSURANCE CO. LTD.....**2ND DEFENDANT**

JUDGEMENT

Date of Last Order : 12/12/2019

Date of Judgement: 14/02/2020

MONGELLA, J.

Aggrieved by the decision of the Resident Magistrate's Court for Mbeya, the Appellant has appealed to this Court on the following grounds:

1. *The trial Magistrate erred in law and facts when excluded the 2nd Respondent from liability by relying on insurance contract which carries many discrepancies namely it is not signed by the 1st Defendant.*

2. *The trial Magistrate erred in law and facts when failed to rule that the motor vehicle in dispute was registered and insured as CAB and hence insurance covered the late AMIN AMAN MBALA.*

3. *The trial Magistrate erred both in law and facts when failed to consider that failure by the 2nd Respondent to call material witness who prepared and signed insurance agreement was done purposely to hide the truth.*

4. *The trial Magistrate erred in law and facts when failed to consider that the insurance of the motor vehicle in dispute creates liability of the 2nd Respondent to the Appellant.*

5. *The trial Magistrate erred both in law and facts when embarked on the issue of third party notice while it was not in issue and the parties did not frame as an issue and deciding this issue denied the right of the Appellant to be heard on it.*

6. *The trial Magistrate erred in law and fact when awarded minimal compensation for loss of life and general damages considering the age of the deceased and dependents left and inconveniences caused due to death.*

7. *That the trial Court Magistrate erred both in law and facts when failed to analyse well the evidence on record as a result made a decision which is not satisfactory.*

Brief facts of the case are as follows: the Appellant sued in the RM's Court claiming for compensation to the tune of T.shs. 107,200,000/- from the Respondents. The claim arises out of an accident which consumed the life of her husband. It happened that her late husband one Amin Aman Mbala boarded a motor vehicle owned by the 1st Respondent and insured by the 2nd Respondent. In the course of the journey at Mikumi area the motor vehicle was involved in an accident. The Appellant's husband died and was buried in Mbeya. The amount claimed thus includes, among others, claim for funeral expenses and compensation for loss of life. The RM's Court found that it was the 1st Respondent who was liable and not the 2nd Respondent and proceeded to award specific damages of T.shs. 7,200,000/-, compensation for loss of life T.shs. 10,000,000/-, general damages T.shs. 10,000,000/-, interest at the rate of 7% from the date of filing the suit to the date of judgment and costs of the suit. The 1st Respondent however, never appeared before the Court and thus the suit proceeded ex parte against him. The Appellant is aggrieved by this decision and has thus appealed to this Court.

The Appellant was represented by Mr. Isaya Mwanry, learned Advocate and the 2nd Respondent was represented by Mr. Samsom Suwi, learned Advocate. The appeal was argued by written submissions.

Arguing on the 1st ground, Mr. Mwanry faulted the reasoning of the Hon. trial Magistrate who reasoned that it is the insurance contract that creates legal relationship between the 1st Respondent and the 2nd Respondent and the parties are to be bound by the terms of the contract and not the terms in the motor vehicle registration card. Mr. Mwanry faulted the said

reasoning on the grounds that: first, the 2nd Respondent did not plead the defence that the motor vehicle was insured for private use and thus such defence was an afterthought something which ought to have been considered by the trial Magistrate. Second, that the alleged insurance contract does not bear the signature of the 1st Respondent and thus there was no contract concluded for the trial Magistrate to rely on and rule that the parties were bound by the terms of the agreement. Third, the 2nd Respondent failed to call the person who was present at the time the contract was entered between her and the 1st Respondent. DW2 who testified for the 2nd Respondent stated that he was not present when the 1st Respondent entered into the contract in Dar es Salaam and lastly that usually, when insuring the motor vehicle the use of that car is taken from the registration card. Cementing on this last argument, he referred to page 45 of the typed proceedings in which DW1, who is the branch supervisor of the 2nd Respondent, stated that they take note of the use of the motor vehicle from the registration card. He also referred to page 49 where DW1 stated that they entered into the contract with the 1st Respondent and they signed, but the contract presented in court doesn't show where the 1st Respondent signed. The said contract had been signed by one named Kagima and not him. DW1 also stated that the WSD does not indicate that their contract with the 1st Respondent was private.

Mr. Mwanry argued that according to such testimonies the 2nd Respondent is liable to the Appellant in accordance with the motor vehicle registration card which shows that it is for commercial purpose of which the deceased was travelling in. He also referred to page 32-33 of the typed proceedings whereby PW2, a police officer, stated that the

owner, that is, the 1st Respondent brought the registration card, cover note and a sticker which showed that the vehicle was for commercial purpose (a Taxi/cab) and the cover note insured seven people. He referred to section 5 of the Motor Vehicles Insurance (Third-Party Risks) Act, Cap 169, R. E. 2002 which provides that it is mandatory for insurance policy to cover third parties. He also cited the case of ***Halifa Ramadhani Lally v. Aron Philemon Nyamile, Gerald Mussa Ng'honi & Alliance Insurance Corporation***, Civil Case No. 2 of 2017 where it was held:

> *"The liability of joint tortfeasors is joint and several, each may be sued alone, or jointly with some or all the others in one action; each is liable for the whole damage, and judgment obtained against all of them jointly may be executed in full against any of them. Therefore, a claim can be maintained against the driver, the owner and insurer of the vehicle causing the accident."*

Mr. Mwanry proceeded to argue that since it is not in dispute that the Appellant's husband was a passenger in the motor vehicle in question and that the said motor vehicle was insured by the 2nd Respondent then the trial Magistrate ought to rule that the 2nd Respondent is liable too for compensation. To this effect he cited the case of ***Michael Ashley v. Anthony Pius Njau Ltd and NIKO Insurance Co. (T) Ltd***, Civil Appeal No. 68 of 2017 where it was held:

"Motor vehicle insurance companies are statutory duty bound to pay compensation to the victims of the accident caused by motor vehicle of their clients but the compensation to be paid must be proved to the standard required by the law."

Mr. Mwanry was of the opinion that the Appellant's husband is covered and the 2nd Respondent is liable. He referred to page 3 of Exhibit D1, the insurance cover, where it says *"liability to third parties-death or bodily injury."* He argued that the same is provided under section 25 of the Motor Vehicles Insurance (Third-Party Risks) Act which provides that ***"in respect of persons carried in or upon or entering or getting onto or alighting from the motor vehicle, death or bodily injury to anyone person."*** He was of the view that Exhibit D1 covers persons carried in the vehicle without qualification as purported by DW1. Thus according to the document there is a third party relationship between the deceased and the 2nd Respondent which is covered under the compulsory third party insurance creating liability to the 2nd Respondent. To this point he cited the case of ***The New Great Insurance Company v. Cross*** (1996) EA 90 in which the meaning and coverage of compulsory third party insurance was explained. The Court stated:

"The compulsory third party insurance, is the kind of insurance which covers the vehicle against claims for liability for death or injury to people caused by the fault of the driver or injury to people caused by the fault of the vehicle owner or driver, compulsory third party may include any kind of physical harm, bodily injuries and may cover the cost of care service and in

some cases compensation for pain and suffering, in each state has different scheme."

Responding to this ground, Mr. Samson Suwi, learned Advocate for the Respondent argued that it is not true that the 2nd Respondent never included the defence that the motor vehicle was insured for private use. He said the same is provided under paragraph 4 of the 2nd Respondent's WSD. He argued that the terms of the insurance policy create the contractual relationship between the insurer and the insured and not the registration card. That, it is the owner of the property who chooses which elements to insure his property and which ones not to. He argued further that under section 4(2) of the Motor Vehicles Insurance Act, Cap 169, R.E. 2002, third party insurance is compulsory and failure to insure third parties in relation to the use of the vehicle is an offence. The law thus compels the owner of the motor vehicle to have an active insurance policy against third parties in relation to the use of the motor vehicle and not the registration card. He argued that in the case at hand the owner decided to insure risks arising from private use and thus risks arising from commercial use were left uninsured which entails that all risks arising from commercial use were to be footed by the 1st Respondent. He added that this is a criminal offence on the part of the 1st Respondent under the insurance law because he allowed the vehicle to be used commercially while the vehicle had no active insurance policy to that effect. He argued that under the circumstances, pinning down the insurer to be liable as claimed by the Appellant will be absurd, unlawful and repugnant to justice.

Mr. Suwi distinguished the cases referred to by Mr. Mwanry of ***Halifa Ramadhani Lally*** (supra), ***Michael Ashley*** (supra), and that of ***The New Great Insurance Company*** (supra). He argued that the Appellant's conclusions are wrong and do not tally with legal principles established in the cited cases. He argued that the Appellant has not pointed out how the circumstances in the cited cases resemble with the circumstances in the case at hand. He concluded that the trial Court arrived at its decision in accordance with the law whereby the Court ruled that the insurance policy is a contract and parties are bound by the terms of the contract. He argued that the Appellant's late husband was not insured and the Appellant have no direct cause of action to sue the 2nd Respondent because there is no privity of contract between them. In support thereof he cited the case of ***Attorney General v. Hassan Abdirahman Mohamed & Phoenix Tanzania Assurance Company Ltd.***, Civil Case No. 141 of 2007, (HC- DSM, unreported).

On the 2nd ground, Mr. Mwanry argued that the documentary evidence tendered before the trial Court and the witnesses' testimonies prove that the motor vehicle involved in the accident was registered for taxi or cab business, however, the trial Magistrate ignored that and relied on the unsigned insurance contract which lacked authenticity. In response, Mr. Suwi argued that if the allegation by the Appellant that the insurance policy was fake for lack of signature and could not be relied upon by the trial Court, then it is erroneous for them to argue that the Appellant is entitled to recover from the 2nd Respondent who is the insurer. He argued that the argument by the Appellant is misleading as in the absence of an executed insurance contract between the 1st and 2nd Respondents as

claimed by the Appellant's counsel, the 2nd Respondent cannot be sued as an insurer of the 1st Respondent's vehicle. On the argument that the motor vehicle was registered as a taxi/cab, Mr. Suwi reiterated his position that it is the terms of the insurance policy which regulate the contract and not the terms in the registration card.

On the 3rd ground, Mr. Mwanry argued that DW1 gave a testimony which clearly showed that he never participated in the negotiation, issuance and signing of the insurance contract. This is because he stated that the contract tendered in Court was signed by one Kagima. However, the 2nd Respondent failed to call the said Kagima to testify in Court. He argued that this witness was material and thus it was mandatory for the 2nd Respondent to call him to testify. The act of not calling him without any reasons shows that they intended to hide the truth. He cited the case of ***Hemedi Said v. Mohamed Mbilu*** [1984] TLR 113 whereby the Court underscored the issue of failure to call material witnesses. The Court held:

> *"Where for undisclosed reasons, a party fails to call a material witness on his side, the court is entitled to draw an inference that if the witnesses were called they would have given evidence contrary to the parties interest."*

He also cited the case of ***Aziz Abdalah v. Republic*** [1991] TLR 71 in which the CAT ruled:

> *"The general and well known rules are that prosecutors are under prima facie duty to call those witnesses who from their*

connection with the transaction in question are able to testify on material facts. If such witnesses are within search but are not called without sufficient reasons being shown, the court may draw the inferences adverse to the prosecution."

Mr. Suwi responded to this argument by arguing that the principle set in the above case does not apply to the circumstances in the case at hand. He argued that the 2nd Respondent is a legal person who can hire and fire his employees and in case an employee is fired he does not leave with the records of the office. The said records can be used by other employees with the authorisation of the 2nd Respondent. He argued that the company can authorise any of its officers to tender its documents in court and not necessarily the officer who made the document. That, the documents are property of the company and not employees.

On the 5th ground, Mr. Mwanry argued that the trial Magistrate invoked an issue of third party notice while it was not in issue. He argued that the said issue was brought and deliberated upon by the Court without according the parties the opportunity to address the Court on the same. To this effect he cited the case of ***Mire Artan Ismail & Another v. Sofia Njati***, Civil Appeal No. 75 of 2008 whereby the Court while citing with approval the case of ***Kluane Drilling (T) Ltd. v. Salvatory Kimboka***, Civil Appeal No. 75 of 2006 (CAT, unreported) held:

"We are of the considered view that generally a judge is duty bound to decide a case on the issue on record and that if there are other questions to be considered they should be

placed on record and parties be given an opportunity to address the court on those questions...we have found above that the effect of a failure to afford the parties the right to be heard on the issues raised suo motu by the High Court vitiated the decision."

Mr. Suwi responded to this ground by arguing that the Appellant's counsel is insinuating that third party notice is a contentious matter necessitating an issue to be framed and parties to be accorded the opportunity to address the court on the existence or non-existence of the matter. He argued that parties are bound by their pleadings and that under paragraph 2(b) of the 2nd Respondent/Defendant's WSD, the 2nd Defendant (now 2nd Respondent) while responding to paragraph 5 of the plaint pleaded that the Plaintiff had no cause of action against him. This led the trial Court into framing an issue on "*whether the 2nd Defendant is liable to compensate the plaintiff for specific damages and loss of life.*" The trial Court therefore pointed the issue of third party while deliberating on the issue framed by the Court.

On the 6th ground, Mr. Mwanry argued that the trial Magistrate ordered for payment of specific damages of T.shs. 7,200,000, compensation for loss of life to the tune of T.shs. 10,000,000/-, general damages to the tune of T.shs. 10,000,000/- and interest rate at 7% to the Plaintiff by the 1st Respondent. Mr. Mwanry was of the view that this amount is unfair and unreasonable taking into account the age of the deceased, the dependents left and inconveniences caused due to the death. He

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referred to Article 107A (2) (c) of the Constitution of the United Republic of Tanzania, 1977 as amended which provides:

> *"The Judiciary in delivering decisions in matters of civil and criminal nature in accordance with the laws, the court shall observe the following principles, that is to say, to award reasonable compensation to victims of wrong doings committed by other persons, and in accordance with the relevant law enacted by the Parliament."*

He as well cited the case of ***STANBIC Bank Tanzania Limited v. Abercrombie & Kent (T) Limited***, Civil Appeal No. 21 of 2001 whereby the Court explained what amounts to damages. The Court held:

> *"The sum of money which will put the party who has been injured or who has suffered in the same position as he would have been if has not sustained the wrong for which he is now getting compensation or reparation."*

He argued that what was decided in the above cited case is completely not reflected in the decision of the trial Court as the amount given cannot be said that it intended to put the Appellant in the same position as she would have been if her husband had not died in the accident.

On the 7th ground, Mr. Mwanry argued that according to the evidence by PW2 and Exhibit PH, especially the registration card, the motor vehicle was registered for use as Taxi/Cab, hence for commercial purpose. He argued

that the defence by the 2nd Respondent that the motor vehicle was registered for private use was a sheer escape from liability. Cementing on this point he gave reasons that: first, the motor vehicle with Reg. No. T 359 DDA was registered for Taxi/Cab which means it was registered for the business of carrying passengers. That the vehicle's seating capacity was 7 passengers and according to PW2 at the accident scene there were 7 passengers. In his view, this meant that even the insurance was issued to cover the purpose of the use of the motor vehicle. Second, he argued that the 2nd Respondent failed to prove or tell the Court why they issued insurance cover for private use while the car was registered for Taxi/Cab. He was of the view that the 2nd Respondent ought to have explained if it is possible for an insurance company to issue an insurance cover contrary to the registered use of the motor vehicle. Third, the insurance agreement tendered by the 2nd Respondent is not an insurance agreement as such because it does not state so and bears no signature of the insured. Fourth, Exhibit D1 if really was the genuine insurance agreement; it does not contain a clause of change of use of the motor vehicle, thereby making the use appearing in the registration card to remain intact.

He argued further that the officer of the 2nd Respondent testified that he was not present when the insurance cover was issued to the 1st Respondent and the signature in Exhibit D2 is his. That the witness also stated that he does not know what transpired before the issuance of the insurance cover, hence making his whole evidence to be hearsay. Mr. Mwanry was of the view that the trial Magistrate ought not to have admitted such evidence and instead require the officer who issued the insurance cover to be summoned to testify as under the circumstance he

was a material witness. He concluded that the trial Magistrate failed to analyse the evidence submitted before her and as a result arrived at a wrong decision.

Mr. Suwi responded collectively on ground 6 and 7. He argued that the decision of the trial Court is in accordance with the law. He said that the Appellant could not be awarded higher and above the amount in absence of specific proof on how much the deceased earned monthly or annually and the manner in which he maintained his family. He argued that the deceased been a mechanic businessman, the Appellant ought to have presented the deceased's TIN Number, business license, quarterly provisional tax remission reports and annual audited financial statements. He argued that such information could have shed light to the trial Court as to how much the deceased earned for maintaining his dependents for it to award damages. He argued that damages for loss of life are in form of special damages and thus unlike general damages they must be proved to some extent.

After considering the arguments by both counsels I find that there are two issues for determination. The first is whether the 2nd Respondent is liable to compensate the Appellant; and second is on the sufficiency of the reliefs awarded.

On the first issue, the 2nd Respondent denies liability on the ground that the motor vehicle was insured for private use and not commercial. Mr. Mwanry argued that as per the registration card, the motor vehicle was registered for commercial purposes for Taxi business. He as well

challenged the authenticity of the insurance policy tendered because it was not signed by the insured. What I have gathered from both parties is that, the 2nd Respondent does not deny being the insurer of the 1st Respondent only that the insurance was for private use. However, usually in motor vehicle insurance, the insured fills and signs the proposal form which states the use of the motor vehicle. In doing this he is guided by the principle of "utmost good faith" in which he has to disclose all the relevant information for purposes of securing the appropriate insurance cover. See: ***Carter v. Boehm*** (1766) K.B. 1162, 1164; ***Afritainer (T) Limited v. Ilula Company Ltd and Reliance Insurance (T) Ltd*** [2005] TLR 326. In practice, the insurance policy is usually signed by the insurer alone because he is the maker.

Mr. Suwi argued that the parties in an insurance contract are bound by the terms in the insurance policy and not the registration card. However, in my considered opinion and as argued by Mr. Mwanry in his submissions, the 2nd Respondent having being availed the motor vehicle registration card before issuing the insurance policy, which indicated that the vehicle was registered for commercial use, ought to have settled all the queries before issuing the insurance policy because the same has an impact on his liability. The Registration card provides the description of the asset and thus having it at his disposal the 2nd defendant knew the registered use of the motor vehicle he was insuring. In my settled view therefore, the 2nd Respondent ought to have assured himself and either required the 1st Respondent to first change the use of his motor vehicle with the relevant authority or he should have executed a separate document with the 1st Respondent stating that even though the motor vehicle is registered for

commercial use it is insured for private use. Unfortunately the records do not indicate any of that being done.

Mr. Mwanry argued that the trial Magistrate introduced a new issue on third party notice without according the parties an opportunity to address the Court on the same. I have gone through the trial Court judgment and found that the argument by Mr. Mwanry is misconceived. The Hon. Trial Magistrate did not in fact introduce a new issue. The issue of third party notice was brought in as part of her reasoning while deciding on the issue whether the 2nd Respondent is liable to compensate the Appellant or not. However, apart from what I have stated, it is my view that claims like the one in the case at hand are based on tort and not contract, thus the party suing (the victim) can as well join the insurance company in the parties to be sued considering the deep pocket rule. The insurance company does not necessarily have to be joined by the defendant through third party procedure as misconceived by the learned trial Magistrate. Therefore, from the observation I have made herein, it is my finding that the 2nd Respondent is jointly liable to compensate the Appellant.

On the second issue, I agree with Mr. Mwanry's argument and the stand in the case of ***STANBIC Bank Tanzania Limited v. Abercrombie & Kent (T) Limited*** (supra) that he cited that the aim of compensation is to take the claimant to the original position where the loss had not occurred. In case of death the dependents of the deceased are to be compensated such an amount as would be appropriate to cater for their expenses if their caretaker was alive. The Plaintiff however, has to prove before the court

the earnings of the deceased and the amount expended on the dependants for their upkeep. There a number of decisions within and outside this country providing guidance on considerations the court have to take into account in reaching a decision on the amount to be awarded. In ***Roseleen Kombe as the Administratrix of the Estate of the Late Lieutenant General Imran Hussein Kombe v. Attorney General*** [2003] TLR 347, this Court, Mchome, J. held:

> *"...it is necessary to know as much as possible the deceased's income and how much he was spending on his widow and other dependents in order to be able to assess how much has to be awarded to them in damages to make them be in a position like they would have been in if the deceased had not died. The Court has not been helped much by the plaintiff in this respect."*

When the above cited case went for appeal in the Court of Appeal (See: ***The Attorney General v. Roseleen Kombe (As the Administratrix of the Late Lieutenant General Imran Hussein Kombe, Deceased)***, Civil Appeal No. 80 of 2002), the CAT agreed with the reasoning of the High Court judge that to assess the awardable damages, it is necessary to know the deceased's income and how much he used to spend on his widow and other dependants. The CAT added that such income and the amount spent on the dependants has to be proved before the court. Specifically, the Court held:

> *"It is evident from decided cases that the measure of damages is the loss of the pecuniary benefit which the dependents would have got from the deceased if the latter had not died, for example: support by way of maintenance,*

education of children and the like. The starting point for the assessment of damages is the amount of the dependency ascertained by deducting from the earnings of the deceased, the estimated amount of his own personal and living expenses. The evidence adduced by the sole witness PW1 regarding the income of the deceased and the amount of loss caused to her and other dependants was in our view wholly unsatisfactory. In fact there was no such evidence. Obviously, the learned trial judge could not embark upon the calculations envisaged in the Davis case, because there was no such evidence."

The decision of the Courts in the above cited cases based on the principles set out in a number of cases including an English case of ***Davies v. Powell Duffryn Associated Collieries Limited*** (1942) AC 601 (Lord Wright). In this case it was held:

"There is no question here of what may be sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, TZS. And pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of year's purchase. That sum, however, has to be taxed down by having due regard to the uncertainties, for instance that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt."

From the above decided cases, it is thus settled that for compensation/damages for loss of life to be awarded to the dependants

the income of the deceased must be proved, the amount used to be spent on the dependants must also be proved. The age and number of dependants must also be ascertained so as to approximate the time the deceased would have taken care of his dependants before they reach an age whereby they could take care of themselves. I have gone through the records and found that the deceased left six dependants being: the wife who is the plaintiff in this matter, three children aged 11 years (Alagrace Mbala), 9 years (Amorita Mbala), and 6 years (Adna Mbala). He also left his parents, his mother one Sipola Sanga, aged 75 years and his father one Amani Mbala, aged 80 years. Marriage certificate, birth certificates of the three children and voter's registration cards of the parents were presented as exhibits to substantiate these facts.

At paragraph 13 of the plaint, the Plaintiff/Appellant stated that the deceased used to earn T.shs. 5.000.000/- net per month. However, in her testimony during the hearing of the case in the trial court, she testified that her late husband used to earn between T.shs. 500,000/- and 600,000/- per month. There was no evidence, however provided to prove such allegation. In addition, what I as well gathered from the Appellant's testimony in the trial court is that she and the family did not solely depend on the deceased. She testified that the deceased used to contribute in helping her take care of the family however; she did not explain the extent of contribution the deceased used to make. None of the witnesses also explained and proved the amount the deceased used to give to his parents for their maintenance. Under the circumstances, I am left with no enough information to assist me in deciding the amount to be granted as compensation basing on the deceased's contribution.

The Appellant/Plaintiff prayed for a total sum of T.shs 107,200,000/- in which 7,200,000/- as specific damages for funeral expenses; 100,000,000/- as compensation for loss of life; general damages; interest at 21% per annum from date of filing the suit to date of judgment; and costs of the suit. I approve the payment of T.shs. 7,200,000/- as funeral expenses awarded by the trial court. Given the circumstances I have explained above regarding the income of the deceased and the amount he used to spend on his dependants, I award the Appellant the sum of T.shs. 40,000,000/- for compensation for loss of life.

The Appellant also claimed for general damages. "*General damages are such as the law will presume to be direct, natural or probable consequence of the act complained of; the defendant's wrongdoing must, therefore, have been a cause, if not a sole, or a particularly significant, cause of damage.*" ***Tanzania Saruji Corporation v. African Marble Company Ltd.*** [2004] TLR 155. They are damages upon which the claimant has to provide proof to a certain extent of existence of the facts he claims to have happened to justify payment thereof. In my considered opinion, compensation for loss of life falls under general damages. A special kind of general damages requiring proof to a certain extent. I thus find the award of general damages by the trial court to be a double relief and thus overrule it accordingly.

The Appellant/Plaintiff prayed for interest at 21% per annum. However, under Order XX Rule 21 of the Civil Procedure Code, Cap 33 R. E. 2002 (CPC), interest awarded upon delivery of judgment after ascertaining the amount to be paid to the judgment creditor is between 7 and 12 percent

per annum from the date of judgment to the date of satisfaction of the decree. The Appellant has been awarded compensation for loss of life which as I have already ruled falls under general damages. Interest payable on general damages is payable as per provisions of Order XX Rule 21 of the CPC. (See also: ***Saidi Kibwana and General Tyre E. A. Ltd. v. Rose Jumbe*** [1993] TLR 175) I therefore award the Appellant interest at 7% per annum from the date of judgment to the date of satisfaction of the decree.

Before I conclude, let me point out on the language used by the 2nd Respondent's Advocate, Mr. Samson Suwi, in his submissions of which was lamented on by Mr. Mwanry in his rejoinder submissions. I also find the language to be inappropriate taking into account the nobility of this profession in which lawyers have to conduct themselves in a highly respectful manner. Mr. Suwi is therefore warned to stop conducting himself in such a manner.

From the foregoing, it is my finding that the 1st and 2nd Respondents are jointly liable to compensate the Appellant for the amounts stated herein. The judgment of the Trial RM's Court is therefore partly quashed to the extent stated herein. The appeal is allowed. Costs awarded to the Appellant.

Dated at Mbeya on this 14th day of February 2020

THE HIGH COURT OF TANZANIA

L. M. MONGELLA
JUDGE
14/02/2020

Court: Judgment delivered in Mbeya in Chambers on this 14th day of February 2020 in the presence of both parties' Advocates.

L. M. MONGELLA
JUDGE
14/02/2020