

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 47 OF 2022**

**LEONARD PAUL KISENHA..... PLAINTIFF**

***VERSUS***

**KILIMANJARO TRUCK COMPANY LTD ...1<sup>ST</sup> DEFENDANT**

**ROLAND SAWAYA.....2<sup>ND</sup> DEFENDANT**

**MJAHID MOHAMED .....3<sup>RD</sup> DEFENDANT**

*Date of last Order: 31<sup>st</sup> October, 2022.*

*Date of Judgment: 20<sup>th</sup> December, 2022*

***EXPARTE JUDGMENT***

**MGONYA, J.**

The plaintiff herein Leonard Paul Kisenha instituted a claim against the Defendants jointly and severally for payment of **Tshs. 410,000,000/= (Tanzania Shillings Four Hundred and Ten Million)** being damages for the injuries caused to him and his family due to the accident caused by the 1<sup>st</sup> Defendant's bus recklessly and negligently driven by the 3<sup>rd</sup> Defendant.

It is averred in his Complaint that; sometimes in the 24<sup>th</sup> of December 2021, there was an accident which involved the Plaintiff's Motor vehicle, Toyota Land Cruiser VX Car type with

registration number **T.323 CWB** and another Truck owned by Kilimanjaro Truck Company Limited trading with the name of Kilimanjaro Express with registration number **T.278 ALQ**. The said accident occurred at Kerege Bagamoyo at about 4:00 am. Due to the said accident, the Plaintiff's vehicle was badly hauled, one of the passengers by the name of **Omenissi Kabora** the Plaintiff's niece sustained chest injuries while the Plaintiff's daughter named **Immaculate Leonard Kisenha aged 16 years** by that time sustained severe traumatic head injuries that led to her death almost instantly.

It is due to that accident, the Plaintiff claims against the Defendants a sum of **Tshs. 360,000,000/=** being damages to the mental and psychological anguish and pain suffered by him and his family as a result of untimely death prompted by the Defendants' reckless acts and lack of empathy demonstrated the Defendants after the accident. Further to that, the Plaintiff claims worth **Tshs. 19,000,000/=** being the cost of the Plaintiff's vehicle hauled in the accident occasioned by the 3<sup>rd</sup> Defendant. He also claims payment of **Tshs. 31,000,000/=** being the expenses incurred towards medical care and funeral undertakings.

It was also averred that the 1<sup>st</sup> Defendant is included as the owner of the vehicle that allegedly caused an accident; the 2<sup>nd</sup> Defendant is included as the Director of the 1<sup>st</sup> Defendant

while the 3<sup>rd</sup> Defendant was the driver of the said motor vehicle. Following that accident, the 3<sup>rd</sup> Defendant was charged for Traffic Case. On a follow up it came to light that at the time of accident which occurred on 24<sup>th</sup> December, 2021 at about 4:00 am, **the Kilimanjaro Bus was not insured as required by the law thus making both the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants reckless and personally liable for damage and injuries caused by the accident to the Plaintiff and his family.**

Upon all the Defendants being served with the Plaint, it was only the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who filed their joint Written Statement of Defence while the 3<sup>rd</sup> Defendant neither entered appearance nor filed his defence. Hence, the case proceeded ***Ex-parte*** against him. However, when the matter was referred to Mediation Centre the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not attend as a result their Written Statement of Defence was struck out under **Order VIII Rule 29 of the Civil Procedure Code, Cap. 33 [R.E. 2019]**.

At the hearing of this case, the Plaintiff was represented by Dr. Rugazia, learned Advocate. Before commencement of hearing of this suit, the following issues for determination of the parties' dispute were framed to wit:

- 1. Whether the death of the Plaintiff's daughter was caused by an accident caused by Defendants' motor vehicle;**
- 2. Whether the accident was caused by the 3<sup>rd</sup> Defendant's reckless and negligent driving;**
- 3. 3. Whether the 2<sup>nd</sup> Defendant neglected his statutory duty of ensuring the motor vehicle involved in the accident in issue; and**
- 4. What reliefs are the parties entitled to?**

In a bid to prove the Plaintiff's case, two witnesses were called, **Leonard Paul Kisenha the Plaintiff** himself who testified as **PW1** and **Innocent Leonard Kisenha** who testified as **PW2**.

Starting with PW1 he testified to the effect that, on 24/12/2021 they left their home to Same for family trip. He was a driver whereby his wife was sitting at front seat on the left side, Immaculate was behind him on back seat, at the centre was **Omenisi Kabora** and on the left there was his son **Innocent Kisenha**. When they reached Kerege he saw a car going through their side. The driver failed absolutely to control his car hence there was a danger of colliding face to face. He tried to escape from that situation but the bus continued to follow them. He decided to get away from the road as there was no any option still that bus went their way and finally hit his

vehicle on the passenger's seat at the back right side. That accident made big injuries to her daughter **Immaculate Leonard Kisenha**, whose face was full of blood and she didn't talk at all. Omenisi Kabora was complaining of chest pain and their car was completely damaged. **One Samaritan named Tumaini Mbonea** took them to **Rabininsia Hospital**. While at the emergence section, the Doctor break the bad news to the Plaintiff's family that **Immaculate** was already dead. PW1 tendered his **driving licence** duly issued by Tanzania Revenue Authority of Tanzania which was admitted as **Exhibit P1**.

PW1, went on testify that after the accident, the Traffic Police took the statement on how the accident occurred, drew the map and issued them a **PF3** for **Onemisi Kobora** who was injured in the accident. The said **PF3 dated 24/12/2021** duly stamped by Mapinga Police Station was tendered as evidence and admitted as **Exhibit P2**.

PW1 testified further that, while at Rabininsia Hospital, they were given a Mortuary Record sheet and also at Muhimbili National Hospital where his daughter's post mortem was conducted, they were granted with Post Mortem Report and Burial Permit. To prove his assertion he tendered the said **Mortuary Record Sheet dated 24/12/2021, the Report**

**on Post Mortem examination (PF 79) and Burial permit dated 26/12/2021 with No.1167299** all in favour of Immaculate Leonard Kisenha (deceased) which were collectively admitted for evidence as **Exhibits, P3, P4 and P5** respectively. Apart from those documents, **PW1** testified that, there was a **Report of an Accident** which was recorded by Coplo Jackson from Mapinga which a copy of it was given to him together **with a sketch map (Ramani ya Ajali)** which shows how the accident occurred. He prayed to tender the said documents which were admitted as **Exhibit P6 and P7** to form part of this done evidence.

It was PW1's testimony that, due to that accident the driver, one Mjahidi Mohamed was sued on reckless **driving which included driving the bus which was not insured, caused death, injury and destruction of property via Traffic Case No.6 of 2022.** Before the court, the driver was represented by Advocate M. T. Ngalo. After the trial, the letter was convicted and sentenced to pay a fine of **Tshs. 20,000/=** for each of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Counts and to pay a fine of **Tshs 50,000/=** for the 2<sup>nd</sup> Count only, or **the Accused person to serve 6 Months imprisonment in default for all four Counts.** PW1 tendered the Proceedings and **decision of the Traffic Case No. 6 of 2022** which involved the Republic against Mjahidi Mohamed @Waziri which was admitted for evidence as **Exhibit P8.**

PW1 informed the court that, they confirmed that the bus had no insurance when the accident occurred but the Defendants went to insure immediately after the accident. They got such information from Tanzania Insurance Regulatory Authority (TIRA) after his counsel wrote a letter to the said Authority. The Report from TIRA revealed that the owner of the car went fast to seek for insurance after the accident where the same was to run from **24/12/2021** at **09:56** while the accident occurred at 04:00 am. of the same date. The **report from TIRA** was tendered and admitted for evidence as **Exhibit P9**.

Testifying as to the damage he suffered due to the said accident, PW1 stated that, his car Landcruiser **No. T. 323 CWB** was totally damaged. He tendered the **Vehicle Inspection Report** duly prepared by the Vehicle Inspector of Bagamoyo District in favour of vehicle with Registration No. T.323 CWB dated 30/12/2021 which was admitted as **Exhibit P10**. PW1 also tendered the **Proforma Invoice** duly prepared by LAFIJ AUTO SERVICES which shows the estimates of costs for repairing the vehicle amounted **Tshs. 19,000,000/=** which was admitted for evidence as **Exhibit P11**. He said that, other expenses which had occurred out of the death of their daughter was the costs for different issues like coffin, transportation and other costs. To prove those costs he tendered Proforma Invoices prepared for funeral expenses from GIBSON General Supply

amounted **Tshs. 20,000,000/=** and another from CHARLENE'S General Supply amounted **Tshs. 10,800,000/=** which were collectively admitted for evidence as **Exhibit P12**.

PW1 testified further that Immaculate was her daughter. She had all the quality of leadership everywhere. She was very kin in every respect. She was a young lady with her plan to be a Lawyer. To prove her speciality and exception PW1 tendered copies of **some certificates, awards and photographs** to demonstrate personal abilities, strength, beauty and school ability in favour of Late **Immaculate** which were collectively admitted before the court as **Exhibit P13**. He went on to state that the accident took the life of their beloved child. She was their eye for the future. He had only two children so they remained with only one child. He is 54 years and her wife is 50, they cannot have chances of having other children. They lost their happiness as Immaculate was their strength.

Before ending up his testimony PW1 prayed to tender a copy of **Motor Vehicle Registration Card** in favour of Kilimanjaro Truck Co. Ltd duly issued by Tanzania Revenue Authority and a Copy of a **Driving Licence of Mjahidi Mohamed No. 4000250135** which were collectively admitted for evidence as **Exhibit P14**.



Next in testimony was PW2 who stated that, Immaculate Kisenha was his young sister. They were very close in every aspect. She was more than his friend as she was very charming and a leader to the family. Her death brought very sad situation to all of them. His father and mother became extremely lonely as they have lost the best thing they had.

This marked the end of the Plaintiff's case.

After conclusion of his case, the Plaintiff filed final written submissions which I am not intending to reproduce as I will be making reference in the course of determination of the framed issues.

Having gone through the adduced evidence, exhibits tendered and the Plaintiff's final submissions, this court is now enjoined to address and determine the four issues at hand, as hereunder.

Starting with the first issue as to whether the death of the Plaintiff's daughter was caused by an accident caused by Defendants' motor vehicle. It was the Plaintiff's case that on 24/12/2021 at 04:00am while at Kerege there was an accident that was caused by Kilimanjaro Coach which consumed the plaintiff's daughter's life. To prove the claims he tendered the report of an accident (**Exhibit P6**) and the sketch map (**Exhibit P7**) which states that on 24/12/2021 around 04:15 hours the

Vehicle with registration **No.T.278 ALQ** Model Scania driven by **Mjahid s/o Mohamed** (3<sup>rd</sup> Defendant) knocked another vehicle with Registration **No.T.323 CWM** make Toyota Landcruiser being driven by **Leonard s/o Kisenha** and caused the death of Immaculate d/o Kisenha. He also tendered a copy of the Proceedings of **Traffic Case No.06 of 2022 (Exhibit. P8)** which shows that **Mjahidi Mohamed @ Waziri** was sued before the District Court of Bagamoyo at Bagamoyo with four counts while in the Memorandum of agreed facts he admitted that he was a driver of a bus with Registration **No.278 ALQ**, he also admitted that on 24<sup>th</sup> December,2021 about 04:15 at Zinga Bagamoyo District while driving the said vehicle, he knocked another Motor Vehicle with Registration **No.T.F323 CWB** make Toyota Landcruiser and caused death of a passenger named Immaculate Kisenha and caused injury to another passenger. The 3<sup>rd</sup> defendant was convicted and sentenced for all four counts and he never appealed against the said decision.

Going through **Exhibit P14** which is the Motor Vehicle Registration Card of the Vehicle Scania Bus with Registration No.278 ALQ it is revealed that the said vehicle is owned by Kilimanjaro Truck Co. Ltd (the 1<sup>st</sup> Defendant) although it was driven by the 3<sup>rd</sup> Defendant. **That being the facts the first issue answered in affirmative.**

Coming to the second issue which is whether the accident was caused by the 3<sup>rd</sup> Defendant's reckless and negligent driving? In order to prove negligence three elements namely; **duty of care, breach of duty and the damages suffered out that breach must be established.** Vivienne Harpwood, in the book of **Principles in Tort Law, 4<sup>th</sup> Edition, Cavendish Publishing Limited**, 2000 at page 24, on proof of action of negligence stated thus:

***"...it is now well established that, in order to succeed in an action for negligence, the claimant must prove each of three elements: first, that a legal duty of care is owed to him or her by the defendant; secondly, a breach of that duty; thirdly, a causative link between the breach of duty and the injury or loss."***

In this case, it is undisputed fact that, the 3<sup>rd</sup> Defendant was driving Motor vehicle which caused an accident. The Plaintiff testified that, when he saw the said vehicle going through his lane in a way of causing a face to face collision, he did his best to avoid it by even driving out of the road but his struggle became fruitless as he was finally knocked at the back side of his vehicle. PW1 tendered the sketch map drawn by the Traffic Police (**Exhibit P7**) which clearly demonstrated how the 3<sup>rd</sup>

Defendant veered away from his lane and moved far away to another lane.

**Section 42 of the Road Traffic Act, Cap. 168 [R.E 2002]** stipulates what reckless driving which includes, the driving a motor vehicle or trailer at a speed which, having regard to all the circumstances of the case, is or might be dangerous to the public or to any person or drives a motor vehicle or trailer in a manner which, having regard to all the circumstances of the case, is or might be dangerous to the public or to any person.

Going with the evidence in this case, the 3<sup>rd</sup> Defendant was supposed to drive in the left lane, where he owed a duty of care to other vehicle and other road users. Unexpected, he moved from his lane and driving through the opposite lane where the Plaintiff's car was, as a result he caused an accident. The sketch map (Exhibit P7) and the court proceedings (Exhibit P8) proved that the accident was caused by the 3<sup>rd</sup> Defendant reckless and negligent driving. The 3<sup>rd</sup> Defendant's never challenged the conviction and sentence of reckless and negligent driving passed against him.

It is the settled principle as provided under **section 43A of the Evidence Act, Cap. 6 [ R. E. 2019]** that, the criminal Judgment which has never been challenged, is relevant to Civil Case. **Section 43A** of the Act reads as follows:

***“43A. A final judgment of a court in any criminal proceedings shall, after the expiry of the time limit for an appeal against that judgment or after the date of the decision of an appeal in those proceedings, whichever is the later, be taken as conclusive evidence that the person convicted or acquitted was guilty or innocent of the offence to which the judgment relates.”***

In view of the above, it is therefore the finding of this court that, the accident was caused by the 3<sup>rd</sup> Defendant’s reckless and negligent driving. This the second issue is answered **POSITIVELY.**

The third issue as to whether the 2<sup>nd</sup> Defendant neglected his statutory duty of ensuring the motor vehicle involved in the accident in issue. It is the legal requirement that the motor vehicle used in public road should be insured. The duty to have insurance cover primarily lays with the owner of the vehicle. See **Section 4 of the Motor Vehicle (Insurance) Act, Cap. 169 [R. E. 2002]** the same position has been expounded by the court of appeal in the case of **R V. SEBASTIAN NDOMBA [1986] TLR 190.**

It was the Plaintiff’s testimony that when the accident occurred on 24/12/2021 at 04:00 am, the Defendants vehicle

was not insured. To cover the said offence, the Defendant went to process the insurance cover soon after the accident. In a bid to prove these facts, the Plaintiff tendered a letter from TIRA dated 22/03/2022 (**Exhibit P9**) which reveals that the Defendants vehicle was insured on **24<sup>th</sup> December 2021** at **09:56:59** which is almost five hours after the accident. That being the existed facts it is clear that when the accident occurred the vehicle was not insured contrary to **section 4 of the Motor vehicle (Insurance) Act.**

As I have discussed earlier, that the statutory duty to make sure that the vehicle is insured rests upon the owner. In this case since the 1<sup>st</sup> Defendant is a legal person (Company) the 2<sup>nd</sup> Defendant who is not disputed that he is the Managing Director has the statutory duty to make sure the vehicle is insured before he allowed it to be used in a public road. Failure of it proved that he neglected his statutory duty of ensuring the motor vehicle involved in the accident in issue. Hence **the third issue is answered in affirmative.**

I now move to the last issue which is on the relief(s) which parties are entitled to. As it has been indicated in his plaint, the Plaintiff prays for Judgment and Decree against the Defendants jointly and severally for payment of **Tshs. 410,000,000/=** being damages which includes; cost of the hauled car valued **Tshs. 19,000,000/=** cost of funeral and medical bills

amounting to **Tshs. 31,000,000/=** and **Tshs. 360,000,000/=** being damages for the trauma and other injuries caused to the Plaintiff and his family as well as payment of general damages and other reliefs deemed fit by the Court and just to grant.

The law is very specific on the award of damages particularly special/specific damages that, unlike general damages which is awarded at the discretion of the Court, the **Special Damages must be specifically pleaded, particularised and strictly proved.** Special Damages are strictly proved as are such loss which will not be presumed by law. They are special expenses incurred or monies actually lost. In various decision made by Court of Appeal and this Court that stance has been reiterated. If there is a need to mention some of the decision, it is the cases ***ALFRED FUNDI VS. GELED MANGO & OTHERS, CIVIL APPEAL NO.49 OF 2017*** (unreported), ***ZUBERI AUGUSTINO VS. ANICET MUGABE, (1992) TLR 137, PETER JOSEPH KILIBIKA AND ANOTHER VS. PARTIC ALOYCE MLINGI, CIVIL APPEAL NO. 39 OF 2009 (CAT-unreported)*** which cited with approval the holding of ***Lord MACNAUGHTEN IN BOLOG VS. HUTCHSON (1950) A.C 515*** and ***RELIANCE INSURANCE COMPANY (T) LTD AND 2 OTHERS VS. FESTO MGOMAPAYO, CIVIL APPEAL NO. 23 OF 2019 (CAT-***

**unreported**). In the case of **ZUBERI AUGUSTINO** (supra) at page 139, the Court of Appeal had this to say:

*“It is trite law, and we need not cite any authority, that special damages must be **specifically pleaded and proved.**”* (Emphasis supplied)

Similarly in the case of Reliance **Insurance Company (T) LTD & Others Vs. Festo Mgomapayo (Civil Appeal No.23 of 2019)** [2019] TZCA (02 October 2019); [www. tanzlii.org.tz](http://www.tanzlii.org.tz), it was stated that:

“The law in specific damages is settled, the said damages must be **specifically pleaded and strictly proved...**” (Emphasis supplied).

In this case, the Plaintiff claims has been particularised in **paragraphs 15** and **17** of the Plaint. To find as to whether the said claims has been strictly proved, I find it imperative to examine one after another. In his final submission Dr. Rugazia referred this court to **section 3 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 [R.E 2002]** where the law provides for compensation if a death of any person is caused by the wrongful act of any person. He went on to submit that, the basis of the claim for children wrongfully/negligently killed in Tanzania is governed by the genius of the Common Law. To fortify his stance, he cited the



case of ***ANDERSON CHALE V ABUBAKAR SAKAPARA, CIVIL APPEAL No. 121 of 2014.*** Dr. Rugazia went further in his submission to submit that, the pain and trauma to the parents of losing a child is one of the source that explains how excruciating losing a child. Turning to the circumstances of this case, he submitted that during the hearing the Plaintiff explained how he died in inside due to his daughter's death and how life lost meaning to him. PW2 who is the Plaintiff's son also explained how his family has become a mourning ground since the Plaintiff's daughter was killed in the accident caused by Defendants. The court in the day when the Plaintiff testified became a morgue for a while. The psychological pain and the trauma suffered by the Plaintiff and his family is a shocking reality.

It is the uncontested testimony of PW1 that, his daughter died at the age of in his family they were blessed with two issues only. His daughter was still young with a lot of dream to be fulfilled by **PW1** as his father and the deceased herself. PW1 testified that his daughter has all the quality of leadership. The Plaintiff stated further that, apart from losing their beloved daughter the Defendants acts after the said accident was another pain to them, none of the Defendants or their representative went to see them after the tragedy.

Having heard the evidence of PW1 and PW2 as well as keenly going through Dr. Rugazia's submission, it is clearly indicated that the accident subject to this suit injured the Plaintiff and his family. The deceased's parents have been affected much and they real suffer psychological pain and the trauma. However, being guided with the position of the law in the above named cases, I find difficult to believe that the said suffering justified the payment of **Tsh. 360,000,000/= as specific damages.** The reason for such finding is that, specific damages involves the real costs incurred by the Plaintiff of which for it to be compensated there must be a strict proof to the same. The Court of appeal in the case of **ALFRED FUNDI** (supra) dismissed the appeal on the facts that, the appellant did not produce any documentary evidence to substantiate and justify the claim. The Court of Appeal was of the finding that, without any supporting documents be tendered that the appellant incurred specific costs there was no verifiable evidence to prove that the appellant incurred costs.

In this case, am aware that the Plaintiff tendered some documents to support his claims which included the Primary Court Certificate, Secondary school leaving certificate and photographs all in favour of his deceased daughter (Exhibit P13). However, since the claim of specific damages involves payment of the real costs incurred by the Plaintiff, I find that those

documents did not prove specific damages to a tune of **Tshs. 360,000,000/=** as pleaded by the Plaintiff. Therefore, I reject this claim.

Next for consideration is the claim for **Tshs. 31,000,000/=** which includes cost of funeral and medical bills. In order to prove those costs the Plaintiff tendered the Proforma invoice (**Exhibits P12**) which shows the costs for coffin, transport and ambulance, grave preparation to a tune of Tshs. 10,800,000/=, catering services, decorations, tents and chairs, mobile toilets, Public address system, camera man, t-shirts and dresses amounted Tshs. 20,200,000/=. The said exhibit indicates that it was Tshs. 31,000,000/= spent in funeral ceremony.

It is undisputed that in any burial ceremony there are some expenditures to be incurred. However, for the court to make an order for the same to be compensated, there must be strictly proof of the same. PW1 in his effort to make sure that he strictly proved his claims he tendered Proforma invoice issued by Gibson General Supply and Charlene's General Supply. However, apart from those invoices there was no any other document to prove that the claimed amount of Tshs. 31,000,000/= was actually spent by the Plaintiff. There is no any single receipt exhibiting payment of the said amount.

In the case of ***RELIANCE INSURANCE COMPANY (T) LTD & OTHERS VS. FESTO MGOMAPAYO (CIVIL APPEAL NO. 23 OF 2019) [2019] TZCA (02 OCTOBER 2019); www.tanzlii.org.tz***, the Court of Appeal when considering whether the claimed amount by the respondent was strictly proved for being stemmed only on the contents of job card and proforma invoice, it was held that, it was not, as the proforma invoice are mere estimate of costs and not costs incurred. Guided with that authority, I reject the claim of **Tshs. 31,000,000/=** as the said costs are not strictly proved to be the real costs incurred by the Plaintiff.

The last special damages claimed amount is **Tshs. 19,000.000/=** as cost incurred for the repairing the motor vehicle which was destroyed due to an accident. This claim need not to detain this court much as like in the claimed costs of funeral, PW1 also tendered in court Vehicle Inspection Report prepared at Bagamoyo after an accident (Exhibit.10) which shows the defects of the Plaintiff Motor Vehicle occasioned by the said accident. He also tendered Proforma invoice (exhibit P11) issued by Lafiji Auto Services on 17/02/2022. However, there is no single document acknowledging payment of Tshs. 19,000,000/= as the real costs actually spent by the Plaintiff to repair his Motor vehicle. In absence of a receipt exhibiting

payment of the said **Tshs. 19,000,000/=** this court is not satisfied that the claim over the said amount is strictly proved.

On the other hand, the plaintiff claimed general damages of which he left the court to quantify the same. The law is settled that General Damages are awarded by the trial Judge after consideration and deliberation on the evidence on record able to justify the award. **In Black's Law Dictionary, 8th Ed, (2004) at page 1174**, define general damages as follows:

***"Damages that the law presumes follow from the type of wrong complained of; ... compensatory damages for harm that so frequently results from the tort for which a party has sued that the harm is reasonably expected and need not be alleged or proved. General damages do not need to be specifically claimed."***

From the above definition it is well settled that, **general damages must be pleaded but not necessarily quantified.** The Judge has discretion in awarding general damages although he has to assign reasons in awarding it. It has been stated by the court of appeal in the case of **PETER JOSEPH KIBILIKA VS. PATRIC ALOYCE MLINGI, Civil Appeal No. 39 of 2009** (CAT-unreported) when quoting the case of **ADMIRALTY**

**COMMISSIONERS VS. SS SUSQEHANNA [1950] 1 ALL ER 392**, that:

***"If the damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question."***

It was also stated in the case of **ANTHONY NGOO & ANOTHER VS. KITINDA MARO, CIVIL APPEAL NO. 25/2014** (CAT-unreported) that:

***"general damages are those presumed to be direct or probable consequences of the act complained of"***.

In this case, it has been testified that due to an accident which was caused by the 3<sup>rd</sup> Defendant reckless driving the Plaintiff suffered a lot. PW1 informed the Court that, his daughter's death subjected him and his family to great pain and psychological injuries. PW1 witnessed the death of his young daughter due to the said accident. The said accident leaves the plaintiff's family with only one child as they were blessed with two issues only. Her daughter was still young with a lot of dreams to be fulfilled by PW1 as her father and the deceased herself. It has been testified that the deceased has all the quality of leadership, she was very kin in every respect and she planned

to be a lawyer. She was PW1's entire life and the eye of their future. The accident occurred while PW1 and his wife have more than 50 years, with no chance to have another child; due to age limit.

It is a plain fact that losing a child regardless how kin he or she was is painful. Nothing can be done to replace the lost one. It is much painful once a parent witnessed the death of his own child due to someone's negligent act. I'm sure that, even if this court will make an order of compensation to a tune of **200 Billion, it would not suffice to indemnify the lost child.** Since it has never been disputed that, the death of PW1's child was a direct consequence of the Defendants breach of duty of care hence subject her entire family to mental anguish, I am convinced that the court should award a reasonable amount as general damages as a solitude for the anguish suffered.

It has been stated by this case when faced with akin situation in the case *OF HUBA HASHIM KASIM VS. M/S TONDA EXPRESS LTD AND OTHERS (CIVIL CASE 75 OF 2010) [2020] TZHC 1300 (14 May 2020)*; [www.tanzlii.org](http://www.tanzlii.org), that:

***"Indeed, one cannot definitely measure the anguish of a close member of the family in monetary value. However as stated earlier, the***

***rationale is at least to act as a solitude for the anguish suffered. Thus, the ultimate determination is to be viewed with objectivity."***

In the case at hand, having considered the agony, trauma, mental anguish and psychological torture suffered by the Plaintiff, his wife and the entire close family members in losing their beloved daughter which are not easily bearable; Having also considered the age of the girl whose right to life has been denied at the age of 16 years only, and I have again noted with concern the fact that the Plaintiff had only two children and they lost one of them at the age of more than 50 years, I find that the Plaintiff is entitled to compensation for general damages. All facts considered this court find the award of **Tshs. 300,000,000/=** (Tanzania Shillings three hundred million only) would meet the end of Justice.

All said and done Judgment is entered in favour of the plaintiff as hereunder:

- 1. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants shall jointly and severally pay the Plaintiff Tshs. 300,000,000/= as general damages;**
- 2. The awarded amount to be charged interest of 7% per annum from the date of Judgment till full satisfaction of the Decree; and**



**3. The Plaintiff shall also have his costs from the Defendants accordingly.**

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**20/12/2022**