

MATARINGWE TRANSPORT LIMITED AND J.H. MWEEMBA (T/A H.T.C. TRANSPORT LIMITED)

SUPREME COURT
CHIRWA, J. S.

21ST SEPTEMBER 1999 AND 13TH OCTOBER 2000
(S.C.Z. APPEAL NO. 140 OF 1998)

Flynote

Civil procedure - Award of interest - Damages - Rate at which interest should be awarded.

Headnote

The Respondent sued for loss of use of his motor vehicle. The court awarded the respondent the sum of K5,000,000.00 being damages for loss of use of his motor vehicle. The learned trial judge awarded interest at average lending rate between the date of the writ, namely 18th October 1993 and current lending rate at the date of the judgment, namely 28th August 1997. The appellant argued that as the learned trial judge ordered that the damaged vehicle could have been repaired within four (4) months, interest should be calculated at period of (4) months only.

Held:

- (1) Appeal allowed. The interest award of the lower court is set aside. In its place we award interest at 20% from date of writ to date of judgment of the lower court. The rest of the order, namely 6% from date of judgment to date of payment stands.
- (2) The period within which the plaintiff has to mitigate his loss in the present case four (4) months is irrelevant when calculating interest, it is only relevant in calculating general damages.

Case referred to:

- (1) Bank of Zambia v Caroline Anderson [1993-1994] Z.R. 47.

For the Appellant N. Dindi, Dindi & Co.
For the Respondent F.S. Chuungu, Silweya & Co.

Judgment

CHIRWA, J.S., delivered the judgment of the Court.

This is an appeal against the interest awarded on a judgment sum of K5,000,000.00 being damages awarded to the respondent for loss of use of his motor vehicle. The learned trial judge awarded K5,000,000.00 as reasonable damages for loss of use of the vehicle for 4 (four) months that had been held as a reasonable period within which the respondent should have repaired his motor vehicle. The learned trial judge awarded interest at average lending rate between the date of the writ, namely 18th October 1993 and current lending rate at the date of the judgment, namely 28th August 1997.

In arguing the appeal Mr. Dindi submitted that the lending rate of interest at the time of issue of the writ was 52% and at the time of judgment, it was 99% and the average comes to 75.5%.

Interest comes to K13,496,916.00 (thirteen million, four hundred and ninety-six thousand, nine hundred and sixteen kwacha) and if this were added to the principal award already paid, the total comes to K18,496,916 (eighteen million, four hundred and ninety-six thousand nine hundred and sixteen kwacha). It was argued that as the learned trial Judge ordered that the damaged vehicle could have been repaired within four (4) months, interest should be calculated at period of four (4) months only. It was further argued that the interest award should follow the principle initiated in the case of *Bank of Zambia v. Caroline Anderson* [1993-94] Z.R. 47.

In reply, Mr. Chuunga for the respondent conceded that the principle in the *Anderson* case was the correct one and that it should be followed. We have considered the arguments advanced and we commend Mr. Chuunga for readily conceding to his learned friend's submissions that the interest award principle in the *Anderson* case was the correct one and should be followed. We therefore allow this appeal, set aside the interest award, which provided for interest rate at lending average rate at the time of judgment, namely 28th August 1997. In its place we award interest at 20% from date of writ to date of judgment of the lower Court. The rest of the order, namely 6% from date of judgment to date of payment stands. We should point out that the period within which the plaintiff has to mitigate his loss, in the present case four (4) months, is irrelevant when calculating interest, it is only relevant in calculating general damages. The appellant will get his costs for this appeal, in default of agreement, to be taxed.
