

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 3556 OF 2002

BETWEEN:

SAMUEL CHAWANDAPLAINTIFF
ON BEHALF OF M. CHAWANDA (DECEASED) & OTHER DEPENDANTS

VERSUS

THE ATTORNEY GENERALDEFENDANT

CORAM: M A TEMBO, ASSISTANT REGISTRAR

Movette, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is an action for damages for loss of dependency and loss of expectation of life.

This assessment is done pursuant to a default judgment entered herein in favour of the plaintiff dated 29th November, 2002. A notice of hearing of this assessment was taken out by the plaintiff and was duly served on the defendant. However, the defendant did not attend the hearing leaving the plaintiff's testimony totally uncontroverted.

The plaintiff was the only witness herein.

He informed the court that the deceased herein was his child who at the time of his demise was 12 years old. He further informed the court that the deceased died after being hit by a government vehicle. The plaintiff tendered in evidence a report on the death of his child which is marked as **Exhibit P. 1**.

The plaintiff further informed this court that the deceased was doing his primary school in standard 4 at the time of his demise. He further informed the court that when the deceased was alive he used to assist in running the plaintiff's banker.

The case of **Rose v Ford** (1937) A.C. 826 settled the law that a claim for loss of expectation of life is maintainable on behalf of the estate of the deceased. As regards the award for such loss, **Cain v Wilcock** (1968) All ER 817 described as basically a conventional figure. This is the case because loss of expectation of life is an aspect incapable of quantification using any known arithmetical formula. The court considered awards made in similar cases to the instant one in the near past as well as the cases cited by counsel for the plaintiff including that of **Catherine Maida on behalf of Fatsileni Maida (deceased) and other dependants v Savala and Prime Insurance Company** Civil Cause Number 3060 of 2001 in which K65,000.00 was awarded as damages for loss of expectation of life by the deceased who died aged 14 years. The Court notes that although the life expectancy in the country is now pegged at less than 40 years old for men the deceased herein still had a good number of years to live if it were not for the wrongful death.

In the circumstances the court awards the plaintiff K70,000.00 as damages for loss of expectation of life. Then there is the claim for loss of dependency.

To arrive at the award to be made for loss of dependency the courts use what is known as the multiplicand and multiplier formula. The multiplicand is a figure representing the deceased's monthly earnings whereas the multiplier is an estimated number of more years the deceased would have lived if it were not for the wrongful death.

Loss of dependency is calculated by multiplying the multiplicand by the multiplier and also the figure of 12, representing the number of months in a year. Then a reduction of

one third of the product is made to take into account sums the deceased would have expended on purely personnel pursuits.

The obvious difficulty herein is that the deceased could not be employed due to his tender age which then has an implication on his earning capacity and consequently on the dependency on him by the plaintiff and others herein.

But this state of affairs does not mean that an award for loss of dependency can not be made.

In **P. Libana v Attorney General** Civil cause Number 296 of 1998 the court adopted a $\frac{1}{4}$ of the domestic servants minimum wage as the multiplicand where the deceased died aged 12 years. The Court adopts a similar approach herein.

And taking the minimum wage to be K1,500.00 the multiplicand shall be K375.00.

As regards the multiplier the starting point is the degree of life expectancy in Malawi currently. Recent statistic's peg life expectancy in Malawi at less then 40 years for men.

In the instant case the deceased died aged 12 years and the court adopts the multiplier of 25 that is assuming that he would have lived up to 37 years.

The calculation for loss of dependency herein therefore becomes $K375 \times 25 \times 12 \times \frac{2}{3}$ which is K75,000.00.

In total the award for loss of expectation of life and loss of dependency is K145,000.00.

Costs of the present action are awarded to the plaintiff.

The court has one comment to make on the pleading's herein. In the statement of claim endorsed on the writ of summons what is claimed is damages for loss of dependency and loss of expectation of life.

But on a perusal of paragraph 5 of the statement of claim it is surprising and confusing that the plaintiff claims damages for pain and suffering and loss of amenities of life. This is most unusual.

Much as human error can not be ruled out the court would like to point out that counsel ought to pay particular attention to pleadings as these are the basis on which relief's are granted. What happened herein is surely a grave oversight on the part of Counsel. But nevertheless it is clear in the mind of the court that damages were sought for loss of dependency and loss of expectation of life and the court has awarded the same to avoid denying justice to the claimant due to Counsel's lapse in attention to the pleadings.

MADE in Chambers at Blantyre this 26th February, 2003.

M A Tembo

**ASSISTANT REGISTRAR OF HIGH COURT AND
SUPREME COURT OF APPEAL**