



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 275 OF 2002**

BETWEEN

MRS. A.W. SEGULA PLAINTIFF

-AND-

NATIONAL INSURANCE COMPANY 1ST DEFENDANT

EAGLE INSURANCE COMPANY 2ND DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar
Nkhutabasa : Counsel for the Applicant
Chulu : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

In her Judgment of 21st August 2007, Hon Justice Kamanga found the defendants liable for damages for the loss of the life of the plaintiff's husband, late Andrew Wyson Segula. The deceased died on a road accident on 7th February 2000 involving motor vehicle registration number 025 MG 320 or MG 724 insured by the defendants. This is the assessment of the damages.

Notice of appointment for the assessment was duly served on the defendants but they chose not to attend. No reason for the non attendance having been

given, the court proceeded in their absence. The evidence the plaintiff adduced therefore went unchallenged.

Under section 3 of the Statute Law (Miscellaneous Provisions) Act, whenever the death of a person is caused by the negligence of another, the negligent person is liable to an action for damages. Section 4(1) of the same Act provides that such action shall be for the benefit of the wife, husband, parent and child of the person whose death has been so caused. In other words the deceased person's dependants are compensated for loss of dependency.

The court has evolved a particular method for assessing the value of the dependency, or the amount of pecuniary benefit that the dependant could reasonably expect to have received from the deceased in the future. This amount is calculated by taking the present annual figure of dependency, whether stemming from money or goods provided or services rendered, and multiplying it by a figure which, while based upon the number of years that the dependency might reasonably be expected to last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years. See **Mc Gregor on Damages, 15th Edition. Para 1557**. Lord Pearson set it out concisely in **Taylor -vs- O'Connor [1971] AC 115 at 140**. he said:

“There are three stages in the normal calculation, namely; (i) to estimate the loss of earnings, i.e. the sums which the deceased probably would have earned but for the fatal accident; (ii) To estimate the lost benefit, i.e. the pecuniary benefit which the defendants probably would have derived from the lost earning, and to express the lost benefit as an annual sum of the period of the lost earnings; and (iii) 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 lump sum.”

In her evidence Mrs. Segula states that her late husband is survived by herself, four children and seven other dependent children. He was employed in the Ministry of Education and he was a Personnel Officer at the time of his death. He had just acquired a degree in Human Resources Management in November 1999 and had all prospects of success in his career. His gross salary was K4 213 and net after tax K3 526.99. She tendered his pay slip marked 'AWS' to prove that. She also stated that the deceased was getting K11 000 house allowance and used to travel a lot and enjoyed field allowances of at least K10 000 a month. She has not been able to furnish proof for that. Apart from the employment with the government the deceased was also running a business as "SU & U General supplies." He had a big hardware shop in Zomba. He used to buy and supply foodstuff to different institutions. He used to go to South Africa to buy motor vehicle spare parts for sale. And he was involved in supplying stationery. Her evidence however did not show how much earnings were being realized from the business. She has also told court that the deceased had been offered Plot No. 1117 in Mzuzu which was later withdrawn after his death for failure to develop it. He had also been offered House No. ON/46 in Zomba by Malawi Housing Corporation but arrangements to buy it fell through because of his death. The plot and the house however would not form part of the deceased person's earnings and therefore can not be considered in the assessment. She also said that her husband was a very healthy man and he died at the age of 45 when she was 42 years old. She believes he would have worked past the retirement age of 60 up to 80.

From these facts I have to establish, the estimate loss of earnings, the estimate lost benefit and the multiplier. I have to make the best estimates I can having regard to the deceased's age and state of health, his actual earnings immediately before his death and the prospects of any increases in his earnings due to promotion and other reasons. I estimate the deceased persons earnings at K20 000 per month after tax and thus K240 000 annually.

Considering the size of his family I would assume he would spend one-third of the earnings on himself and leaving the two-thirds for the benefit of the family. Thus K160 000 annual figure of dependency of his family on him.

Next I have to ascertain the appropriate multiplier. The multiplier is determined from the date of the death of the deceased considering his age and his expectation of working life, the life expectancy of his widow and other dependants, his future prospects, his engagement in some especially hazardous employment and any prospect of the remarriage of the widow. (see ***Banda v. Chunga*** 12 MLR 283). The evidence given shows that the deceased was not engaged in any hazardous employment and the widow does not intend to ever get married again. He died at the age of 45. He should have retired at 60. The family had 15 more years of depending on him. That would be the multiplier. I would discount it to 11 so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years. I now have K160 000 as the multiplicand and 11 as the multiplier. The plaintiff is therefore awarded K1 760 000 as damages for loss of dependency plus costs of the action.

Made in chambers this 17th day of July 2008.

T.R. Ligowe

ASSISTANT REGISTRAR