

DUP

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1371 OF 2001**

BETWEEN:

KAINGA BWANALI.....PLAINTIFF

AND

MR. MWIMBA.....1ST DEFENDANT

PRIME INSURANCE COMPANY.....2ND DEFENDANT

CORAM: R. ZIBELU BANDA, ASSISTANT REGISTRAR
Chisale for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is a claim for damages for loss of expectation of life, prospective dependency and loss of society and companionship. It is brought by the plaintiff as dependent of the deceased child on his own behalf and on behalf of other dependents of the deceased. The deceased, a child of 11 years old died in a road accident involving the first defendant. The second defendant is sued as insurer of mini bus that killed the child. The application is brought under the Statute Law (Miscellaneous Provisions) Act. The issue of liability was put to rest after the plaintiff obtained default judgement on 16th August 2001. The matter now comes for assessment of damages.

The defendants did not appear for the hearing although they were duly served with summons for hearing. Leave was granted to proceed with the hearing since there was no communication from any of the defendants explaining their absence.

It is the plaintiff's undisputed evidence that his daughter Mirriam Bwanali was killed on 16th April 2000 in a road accident after being hit by the defendant's minibus. The death of the child has adversely affected him and his wife who is also the mother of the deceased. The deceased used to help in household chores including; cooking for the family, looking after her

younger siblings, drawing water and she acted as sales person in the family's small business. She was at school, in standard six and was a class monitor.

Her death has meant that most of the chores which she performed are now done by the plaintiff himself since the mother is sickly. The plaintiff has no spare time to do his own errands as he has to do the chores which, were done by the deceased. He has also suffered loss as he was looking forward to the deceased's assistance in his old age.

Damages recovered for a claim of this nature come under the aspect of loss of expectation of life and loss of dependency. It was held in *Rose v. Ford* (1937) A.C. 836 that there is no difference in principle between the approach in arriving at damages for loss of expectation of life and damages for loss of an arm or eye. In both cases it is not easy to arrive at a monetary quantification of the loss suffered with mathematical precision. As such the award made is merely conventional. The courts use experience and guidance from decided cases of a comparable nature to arrive at just awards. (*Wright v. British Railways Board* (1983) 2 A.C. 773)

It should be noted however that it is not possible to know with certainty in cases of infants whether they would have turned out resourceful and helpful to their parents in later years.

“ there is no clear evidence of the desire or the ability of the child to assist the parents in later years; on the other hand the parents have all the expenses of bringing up the child ahead of them.” See *McGregor on Damages*, Sixteenth Edition at 1177. In other words, bringing up children is more of a liability to parents than it is a benefit. Hence, it was held in *Chinula V.City Motors Ltd*, Civil Cause Number 1406 of 1993 that,

“ Awards made by this court as shown by the cases cited to me are low and in reality they are really awarded for loss of companionship as well as pride in the child's accomplishments,” at page 3.

Most of the cases Counsel cited to me are in respect of adolescent children. The formula in assessing damages is different from that which apply to infants as in the present case. In the case of death of an adolescent child, the parents would have incurred the cost of bringing up and training the child and being on the verge of reaping some financial return. Obviously the awards in such cases are on the higher side than where the deceased is an infant. See generally, *McGregor* at 1177.

Counsel asked this court to award damages in the range of K25,000.00 to K45,000.00 for loss of expectation of life and K20,000.00 to K30,000.00 for loss of dependency. However after a careful consideration of the circumstances of this case and going by the recently decided local cases, I find such amounts to have no authority. Under the circumstances, I am of the view that an award of K20,000.00 for loss of expectation of life and K15,000.00 for loss of dependency to be adequate compensation to the plaintiff and the other dependents. The plaintiff is thus awarded a total of K35,000.00. The defendants are condemned to costs of this action.

Made in Chambers this day of November 7, 2001 at **BLANTYRE**.



R. Zibelu Banda

ASSISTANT REGISTRAR