

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO 447 OF 2000



BETWEEN:

MARY GRAZAN MZANDA PLAINTIFF

AND

SHIRE BUS LINE LIMITED DEFENDANT

CORAM: POTANI, REGISTRAR

Masumbu, Counsel for the Plaintiff

This action arises from the death of Lamosi Mzanda. He died on November 24, 1999, as a result of a road traffic accident attributed to the negligence of the defendant's servant. The action is taken by Mary Grazan Mzanda, as administratrix of the deceased's estate. The claim is for loss of dependence and loss of expectation of life. Liability is not in issue as there is a default judgment in favour of the plaintiff. The task before the court is that of assessment of damages.

The hearing of the evidence on the assessment proceeded in the absence of the defendants. They were, however, duly notified of the hearing.

According to the plaintiff, the deceased was her husband. He died at the age of 21. Apart from the plaintiff, the deceased is survived by three children namely: Elita aged 8, Chimwemwe aged 6 and Georgina aged 3.

It was also the evidence of the plaintiff that the deceased was a charcoal dealer. He used to give the plaintiff K1.000.00 every month for domestic

upkeep. Apart from supporting his wife and children, the deceased also used to look after his 45 year old father.

The case of **Rose v Ford** (1937) AC 826 recognised the legal position that where death results from the negligence of another, an action for loss of expectation of life is maintainable on behalf of the estate of the deceased. Loss of expectation being an aspect that can not be quantified in monetary terms by employing any known arithmetical formula, courts, in arriving at the award of damages, use experience and guidance afforded by awards made in decided cases of a comparable nature.

Reverting to the present case, the deceased died at the age of 21. Recent available statistics indicate the level of life expectancy in this country to be in the region of 48 to 55 years. The deceased had therefore lived only close to half of the life he would have been expected to live. In the case of **Sambani v. Attorney General** Civil Cause number 1004 of 1998, an award of K20,000.00 was made for loss of expectation of life. The deceased in that case died at the age of 50. It was the courts view that she had almost lived her full life. Considering the circumstances of this case, an award of K45,000.00 is made for loss of expectation of life.

As regards the claim for loss of dependence, courts have adopted what might conveniently be called the multiplicand and multiplier formula in arriving at the award to be made. The multiplicand is the figure representing the deceased's monthly income while the multiplier represents an estimated number of more years the deceased would have lived had it not been for the wrongful death. To arrive at the award for loss of dependence, the multiplicand is multiplied by the multiplier and then the figure of 12, representing the number of months in a year. Then a reduction of one third is made from the product to take into account expenses the deceased would have incurred on purely personal needs.

In the instant case, the plaintiff never gave evidence on how much the deceased was earning in a month. She instead testified that the deceased used to give her K1000.00 monthly for domestic upkeep. This

means that in arriving at the award for loss of dependence, there will be no need for the one third reduction. The plaintiff died at the age of 21. As indicated earlier, the level of life expectancy in this country is in the regions of 48 to 55. In arriving at the multiplier, I bear in mind that the deceased could have departed earlier due to other eventualities of life and also that payment of a lumpsum would be of obvious benefit to the deceased dependants. I would then consider a multiplier of 20 to be appropriate. This assumes that the deceased would have lived up to the age of 41. The calculation for loss of dependence would then be $1000 \times 20 \times 12$ which comes to K240,000.00. The total award for loss of expectation of life and loss of dependence, therefore, comes to K285,000.00.

The next thing I have to do is to apportion the awarded sum to the deceased's 5 dependants. The usual approach is to allocate larger sums to younger dependants. I would then apportion the K285,000.00 as follows:

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| 1. | Deceased's father, aged 45 | K30,000.00 |
| 2. | Plaintiff (Widow), aged 21 | K40,000.00 |
| 3. | Elita (Daughter), aged 8 | K57,000.00 |
| 4. | Chimwemwe (Daughter), aged 6 | K74,000.00 |
| 5. | Georgina (Daughter) aged 3 | K84,000.00 |

It is ordered that the sums awarded to Elita, Chimwemwe and Georgina who are minors be paid into court to be deposited in an interest earning account for their benefit until attainment of majority age.

Costs of this action to be borne by the defendant.

Made in Chambers this day of July 18, 2001, at **BLANTYRE**


H S B Potani
REGISTRAR