

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 3318 OF 2002

BETWEEN:

MSALASU GODILEKI (On his own behalf and on behalf of
The dependants Of Mwandida Godileki).....PLAINTIFF

AND

MUHAMAD IQBAL CHINOY.....1ST DEFENDANT
PRIME INSURANCE COMPANY LIMITED.....2ND DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Mambulasa, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages pursuant to a default judgment in favour of the Plaintiff for damages for loss of expectation of life of the deceased and loss of dependency on the deceased by the dependant plaintiffs. The judgment is dated 28th March, 2003.

A notice of hearing of assessment of damages herein was served by the plaintiff on the defendant but the defendant did not appear at the hearing of this assessment. That left the plaintiff's evidence uncontroverted.

The deceased herein was the plaintiff's wife. She died in an accident caused by the negligence of the 1st defendant's agent. The 2nd defendant is the 1st defendant's insurer. The deceased died aged 43 years. The deceased used to help the plaintiff with household chores. She also helped in farming in which venture the deceased and plaintiff used to earn between K3,000.00 and K2,000.00 at the end of each farming season.

An action for loss of expectation of life is at law maintainable on behalf of the estate of the deceased. See **Rose v. Ford** (1937) All ER 826. The award to be made in such an action is arrived at using the same principles used in arriving at awards in claims for personnel injuries. See **Cain vs. Wilcock** (1968) All ER 817. The figure awarded is therefore a conventional one based on awards made in cases of a similar nature to the one under consideration. The relevant factor herein is that the deceased died aged 43 years. She had several more years to live had it not been for the wrongful death herein. In **Nasiyaya v. Mazinga** Civil cause Number 2484 of 2002, K48,000.00 was awarded as damages for loss of expectation of life where the deceased died aged 45 years.

In the present case, this court awards the plaintiff the sum of K60,000.00 as damages for loss of expectation of life considering also that the value of the Kwacha has depreciated since the other award referred to above was made.

This court now turns to the claim for loss of dependency.

The approach the courts have adopted in arriving at damages recoverable in suits for loss of dependency is that of using what is termed the multiplicand and multiplier formula. See **Mallet v. McMonagle** (1970) A.C. 166, 175- The multiplicand is the deceased's monthly income whilst the multiplier is the approximated number of years the deceased would have lived if not for the wrongful death.

To arrive at the level of dependency, the multiplicand is multiplied by the multiplier and then the figure of 12 representing the number of months in a year. Whatever the product, there is a reduction of one third, representing the portion the deceased would have presumably expended on purely personal needs.

In the instant case the deceased was unemployed but she was nevertheless helping in doing household chores. Actually, she was very reliable in the home. The deceased also helped in the family farming activities.

The court is of the view that the justice of the matter calls for an award of damages for loss of dependency notwithstanding the unemployment of the deceased. The deceased

would at the minimum possibly work as a domestic worker and earn a wage of a domestic worker.

In the premises this court is of the view that, considering that the deceased was unemployed, for purposes of serving justice the level of dependency afforded by the deceased to her family be put at the minimum domestic worker's monthly wage. Now the minimum wage of the domestic worker being K2,000.00. So that the multiplicand shall be K2,000.00.

The next aspect to be decided is the multiplier. The deceased died aged 43 years. She had some more years to live in view of the level of life expectancy in Malawi which was recently pegged at over 40 years.

This court adopts the multiplier of 7 considering that a lump sum shall be ordered as damages for loss of dependency.

Now, using the formula alluded to earlier on the loss of dependency on the deceased herein works out as follows: K2,000.00 x 7 x 12 x $\frac{2}{3}$ coming up to K112,000.00. The sum of K112,000.00 is therefore awarded to the plaintiff herein as damages for loss of dependency. The total award for loss of expectation of life and loss of dependency herein is therefore K172,000.00

The sum awarded is apportioned amongst the decease's dependants as follows:-

	AGE	AMOUNT
Msalasu Godileki	Unknown	20,000.00
Dorothy Godileki	20	17,000.00
Chilanda Godileki	17	25,000.00
Muletsa Godileki	15	30,000.00
Talekani Godileki	14	35,000.00
Ntaliwanda Godileki	12	45,000.00

The sums awarded to Chilenda, Muletsa, Talekana and Naliwanda shall be paid into court and be deposited in an interest earning account for the benefit of each one of them.

Costs of this action are for the plaintiffs.

Made in Chambers at **Blantyre** this 9th September, 2003.

M A Tembo

ASSISTANT REGISTRAR