

**IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY
CIVIL CAUSE NO. 66 OF 2002**

BETWEEN

**LUCY MUNTHALI NJIKHO
(ANNE & BEATRICE NJIKHO DECEASED).....PLAINTIFF**

AND

SHIRE BUS LINES.....DEFENDANT

CORAM: MRS I C KAMANGA, SENIOR DEPUTY REGISTRAR

Davie Lameck, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This matter comes before this court for assessment of damages following a default judgement that was entered in the plaintiff's favour on the 10th June 2002.

The plaintiff's claim is for damages for personal injury and loss of dependency due to the defendant's negligence. Hearing of the assessment of damages proceeded in the defendant's absence as there was indication that the defendant had been duly served with a notice of the hearing and he never appeared in person nor gave any explanation for his failure to attend the proceedings. Consequently, the plaintiff's witnesses' testimony is uncontested.

The plaintiff herself was the first witness. She told the court that on 27th July 2001 she had come to Mzuzu with her two daughters to see her uncle who was admitted in hospital. She had come from her village in Mzimba. In the evening she got on the defendant's night

compost bus with her two daughters. The elder daughter was B.N., she was seven years old and in standard one. The younger one was in nursery. When the bus got to Champhira, the plaintiff heard people shouting that they were going to die. At that time, one of the children was on her lap, the other one was sitting beside her on the seat. Then the bus missed the road and dived into the river. The plaintiff does not remember how she got out of the river but she realized that she was out of the river and had sustained some injuries. She told the people that she had two children with her in the bus. They could not find them. Upon further search they found the body of the younger child the following day. The body of the elder child was found two days later.

The plaintiff further testified that when the bus plunged into the river, the chairs fell upon her as a result of which she sustained some internal injuries. She tendered a medical report which indicates that her permanent incapacity as a result of the injuries she sustained was assessed at 48%. She can do manual work but with difficulties. Before the incident, she used to work as a petrol attendant at Mobil Filling Station. She was forced to resign because she cannot stand for a long time. The plaintiff stated that she also cannot walk long distance and only sleeps on one side. Since the accident, she has been admitted twice for pains that have resulted from the accident.

Let me start with the plaintiff's claim for loss of dependency and expectation of life. I award the plaintiff K50,000.00 for the loss of each expectation of life. As the plaintiff lost two children I award her K100,000.00 under this head.

Then there is the claim for loss of dependency. Under this head, the nature of the benefit is found in the maintenance and support that the deceased was providing for the plaintiff as well as the benefits which the deceased could be expected to have continued to provide-(**Vincent Mwakamo vs. Flexer Ngoma**) (Civil Cause No. 1519 of 1997) The plaintiff testified that B., her elder child could wash plates, cook and fetch water at the time of her demise. She was also a good performer at school. I know that it is hard to assess the damages for loss of dependency where the deceased was a child. B. would however do house work at the time of her demise. In **Vincent Mwakamo** the court

appreciated that much as there could be no pecuniary benefit in respect of the death of a person who has not yet started to earn his own living, there was still loss of society and companionship and pride in a child's achievement. In solving the problem of how to attach value to such loss, the court considered that such award be fixed at half the average industrial earnings. As this point in time, the average industrial earning as at now is K1,500.00. Half of this yield K750.00.

In **Carmell vs. Wilson**, (1982 AC 27), The house of Lords accepted a multiplier of 16 for a boy of 15 years. Here B. was seven years old I shall use a multiplier of 19. this multiplier takes into consideration all factors that are taken into account in identifying one, like, vicissitudes of life, individual's possible expectancy pecuniary benefits and others. Using this multiplier, I award K171,000.00. Taking the same considerations into account I award the plaintiff the same amount of K171,000.00 for the loss of dependency for the life of her younger child A.N.. In total, I award the plaintiff K442,000.00. For loss of dependency and expectation of life.

The plaintiff also claims damages for personal injuries I award her K89,000.00 under this head. The plaintiff commented that she resigned from her job due to non performance as a result of injuries that she suffered in the accident. Unfortunately, the plaintiff never pleaded the same in her pleadings and this court cannot award her any damages under this head.

The plaintiff however spent some moneys incidental to the admission when she sustained the injuries, the total for the incidentals comes up to K1,500.00. I award her the same.

Then there is the claim for the two coffins, transport and incidentals related to the funeral of the two children. The total comes up to K39,000.00. I award the same.

I also award the plaintiff costs for this action.

MADE IN CHAMBERS this 2nd day of October, 2003

Mrs I C Kamanga

REGISTRAR