

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRAR**

**CIVIL CAUSE NO. 2018 OF 2003**

**BETEWEN:**

**BHUPATRAI C TANNA.....,.....PLAINTIFF**

**AND**

**KENETH Y. SANGA(Administrator of the Estate  
of Mr Sanga deceased).....DEFENDANT**

**CORAM: TEMBO, ASSISTANT REGISTRAR**

Kalaya, counsel for the plaintiff

**ORDER ON ASSESSMENT OF DAMAGES**

This is this court's order on assessment of damages herein made pursuant to a default judgment in favour of the plaintiff for damages for loss of life. The default judgment is dated 27<sup>th</sup> August, 2003. The notice of hearing of this assessment was duly served on the defendant who never appeared at the hearing. That left the plaintiff's evidence totally unchallenged.

The plaintiff's claim is for loss of life of the deceased Kashmir Tanna. This follows a fatal accident which occurred on 12<sup>th</sup> February, 2003 in which part of the body of the defendant's lorry hit the deceased resulting in the death.

The deceased died aged 24 years. At the time of her death the deceased was working as a teacher at sacred heart private school where her monthly salary was K4,500.00. The deceased is survived by her elder sister Bhuptrai C Tanna aged 26 years and her father Bhuptrai Tanna aged 47 years. This court has read the submissions of counsel on the quantum of damages and has a few things to say.

The submissions by counsel indicate that the deceased is survived by her father, mother and sister. Yet in evidence the only dependants of the deceased that were identified were the deceased's father and elder sister. This court therefore wishes to remind counsel that submissions ought not to be used as a forum for introduction of new facts. Facts ought to be in evidence. The submission that the deceased is also survived by her mother is therefore disregarded as it is not borne out of the evidence. Another aspect of the submissions relates to the plaintiff's claim. The plaintiff claims in the statement of claim damages for loss of life. Yet in the submissions the plaintiff is further referring to a claim for damages for loss of dependency. The damages for loss of life are understood by this court to mean damages for loss of expectation of life. The category of damages for loss of dependency is distinct from that for loss of expectation of life. Those damages for loss of expectation of life are claimed on behalf of the estate of the deceased whereas those for loss of dependency are claimed for the benefit of the dependants of the deceased. As so in the present case the manner of pleading herein leaves a lot to be desired and counsel ought to take this seriously and pay more attention to the manner of pleading. Pleadings are not talking and ought to be fair as they define the issues before the court.

In the circumstances the plaintiff's submissions for damages for loss of dependency shall be disregarded as they are not covered by the plaintiff's pleadings. This court shall therefore consider the plaintiff's claim of damages for loss of expectation of life as pleaded.

Damages for loss of expectation of life are claimable in an action maintained on behalf of the deceased. See **Rose v Ford** 1937 A.C. 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 personal injuries. See **Claim v Wilcock** [1968] ALLER 817. The figure awarded is therefore a conventional one arrived at after seeking guidance from cases of similar nature to the one under consideration. This court considers that the deceased died at the age of 24 years. The recent national statistics put the average life expectancy in Malawi between 40 and 50 years. Clearly, therefore, the deceased had a good number of years to live were it not for the wrongful death.

This court has sought guidance from cases of similar nature to the instant one like that of **Matupa v Banda and Prime Insurance Company Limited** Civil Cause Number 1000 of 1998. In that case the deceased also died aged 24 years. And a sum of K40,000.00 was awarded for loss of expectation of life in June, 2001. Since that award the kwacha

has lost value.

In the circumstances of the present case this court awards the plaintiff K180,000.00 damages for loss of expectation of life.

The same is apportioned between the plaintiff's sister and her father in equal shares of K90,000.00 each. Costs are for the plaintiff.

Made in **Chambers** at Blantyre this.....May, 2004.

**M. A. Tembo**

**ASSISTANT REGISTRAR**