

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 4089 OF 2002

BETWEEN:

MERCY KANYENGA.....1ST PLAINTIFF
FAIDA JANUARY.....2ND PLAINTIFF
MRS GANIZANI.....3RD PLAINTIFF

AND

PRIME INSURANCE COMPANY LIMITED.....1ST DEFENDANT

CORAM: TEMBO M.A., ASSISTANT REGISTRAR

Mpando, 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 persons herein and loss of dependency on the deceased by the dependant plaintiffs. The judgment is dated 10th January, 2003.

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

The 1st plaintiff sues on her on behalf and on behalf of the dependant of Aleke Chidoola. The 2nd plaintiff sues on her on behalf and on behalf of the dependants of Fyness January her child. The 3rd plaintiff sues on her on behalf and on behalf of other dependants of her sister Alice Jumapiri.

The deceased persons herein died in an accident at Chemusa. That happened when the vehicle the deceased were traveling in was hit by the vehicle driven by the defendant's insured.

Aleke Chidoola died aged 29 years. She was unemployed and is survived by a son Chrispin Chidoola aged 13 years as well as the 1st plaintiff whose age is unknown.

Fyness January died aged 17 years. She was in form 1 at the time of her death. During her life Fyness used to assist her mother the 2nd plaintiff with household chores. Fyness is survived by her mother the 2nd plaintiff and her father Mr January.

Alice Jumapiri died aged 30 years. She is survived by the 3rd plaintiff, her mother Mrs Ganiza whose age is unknown, George Ganiza whose age is also unknown, Ganizani Jumapiri her 12 year old son, Lydia Ganizani her 10 year old daughter, Atupele Jumapiri her 16 year old daughter and Sella Jumapiri her 3 year old daughter. During her life Alice Jumapiri used to give about K2,500.00 in kind to her dependants.

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 guidance afforded by awards made in cases of a similar nature to the one under consideration

The starting point is the average life expectancy of Malawians which was recently pegged in the range of 40 to 50 years according to national statistics. This court is has had occasion to consider cases from which guidance on the level of awards can be sought. This court does also not lose sight of the fluctuation in the value of the Kwacha since those awards were made.

In Mpuche v Kwanyasa civil cause number 2627 of 2002 a sum of K70,000.00 was awarded as damages for loss of expectation of life. The deceased therein died aged 12 years. That award was made in April, 2003. In another case of Chimbula v Yona t/a J G Chokotho and NICO civil cause number 301 of 2001 the sum of K60,000.00 was awarded as damages for loss of expectation of life where the deceased died aged 21 years. That award was made in October, 2002.

Upon a careful consideration of all the circumstances herein this court awards the following sums as damages for loss of expectation of life: to the 1st plaintiff K80,000.00 ,to the 2nd plaintiff K120,000.00 , and to the 3rd plaintiff K75,000.00 .

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 this court has to work out the 3 separate multipliers. In deciding these this court considers that, among other things, the deceased persons might have died earlier than the projected life expectancy and that their dependants shall receive the great benefit of one lump sum in damages as opposed to several payments.

The deceased in relation to whom the 1st plaintiff sues died aged 29 years. Taking into account the average life expectancy and the other factors outlined above this court adopts a multiplier of 15 for Aleke Chidoola. And for deceased in the suit by the 2nd plaintiff this court upon considering the relevant factors outlined above and that the deceased died aged 17 years adopts a multiplier of 23. For the deceased in relation to whom the 3rd plaintiff sues, this court notes the relevant factors above and the deceased's age of 30 years and adopts the multiplier of 14.

The next aspect to be decided are the multiplicands.

In the instant case, it is very clear that Alice Jumapiri used to give about K2,500.00 to her dependants and this court adopts the same as the multiplier with regard to her. No reduction of 1/3 shall not be effected on that sum. And with regard to Aleke Chidoola this court adopts the minimum wage for domestic workers of K1,500.00 as the multiplier. This is despite the fact that she was unemployed. This is so because the work of a domestic worker is the minimum that she could presumably have undertaken had she sought employment. And that is the only way of affording justice to the deceased estate herein as opposed to making no award when that deceased was being depended on anyway. For Fyness January this court adopts the same philosophy as in the case of Aleke Chidoola above. But since she died aged less than 18 years, in terms of Wages (Domestic Servants) Order made under S. 5 (3) Regulation of Minimum wages and Conditions of Employment Act, she is entitled to $\frac{3}{4}$ of the adult domestic workers minimum wage of K1,500.00. And so for Fyness this court adopts a multiplier of K1,125.00.

And now using the multiplicand and multiplier formula outlined above the level of dependency for the 3 plaintiffs works out as follows:

Aleke Chidoola, $K1500 \times 15 \times 12 \times \frac{2}{3} = K180,000.00$,

Fyness January, $K1,125.00 \times 23 \times 12 \times \frac{2}{3} = K 207,000.00$, and

Alice Jumapiri $K2,500 \times 14 \times 12 = K420,000.00$.

Consequently the following sums are awarded as damages for loss of dependency, to the 1st plaintiff K180,000.00, to the 2nd plaintiff K207,000.00 and to the 3rd plaintiff K420,000.00.

The sums awarded to the plaintiffs are apportioned amongst the dependants as follows:

Award to 1st plaintiff,

Name	age(years)	amount(Kwacha)
Mrs Mercy Kanyenga	-	60,000.00
Chrispin Chidoola	13	200,000.00

Award to 2nd plaintiff

Faida January	-	163,500.00
Mr January	-	163,500.00

Award to 3rd plaintiff

Mrs Ganizani	-	40,000.00
George Ganizani	-	40,000.00
Sella Jumapiri	3	165,000.00
Lydia Ganizani	10	100,000.00
Ganizani Jumapiri	12	90,000.00
Atupele Jumapiri	16	60,000.00

The sums awarded to Chrispin Chidoola, Ganizani Jumapiri, Lydia Ganizani, Atupele Jumapili and Sella Jumapiri shall be paid into court and shall be deposited in interest earning accounts for the benefit of these young children.

Costs of this action are for the plaintiffs.

Made in Chambers at **Blantyre** this 11th May, 2004.

M A Tembo

ASSISTANT REGISTRAR