



MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 962 OF 2015

BETWEEN:

SUZGO MAPUNDA[Suing on his own behalf and on behalf of Constance Mapunda(deceased)].....**PLAINTIFF**

AND

STEVE DUWA.....**1ST DEFENDANT**

REUNION INSURANCE COMPANY LIMITED.....**2ND DEFENDANT**

CORAM: K. BANDA, ASSISTANT REGISTRAR

Kalaya , Counsel for the plaintiff

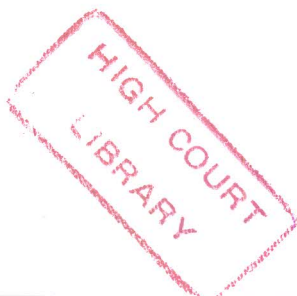
Alide , Counsel for the first and second defendants

Clerk, F.Ngoma

ORDER ON ASSESSMENT

This is an order on assessment of damages resulting from default judgment of 27th January, 2016. The plaintiff, father of the deceased, brought this application under part 1 (Fatal accidents) to wit section 7, Statute Law (Miscellaneous provisions), Cap 5:01 of the Laws of Malawi.

The 2nd defendant was added as a party as they were at all the material times the insurers of the said unregistered motor vehicle IT 5365 Toyota Vitz Saloon. This was pursuant to the provisions of section 148 of the Road Traffic Act. That said the plaintiff claims damages for loss of expectation of life, damages for loss of dependence, special damages to wit for the police report and medical report and costs of this action.



This court hasten to state that it delayed to give this judgment as counsel had asked for some days within which to make submissions and which it gladly granted but only to get one from the plaintiff counsel and saw none from the defendants counsel. The court therefore proceeded to write this judgment upon noting that the seven days had lapsed.

The facts of the case as explained by the plaintiff are that on 5th May, 2015 the first defendant was driving an unregistered motor vehicle IT 5365 Toyota Vitz Saloon from kaporo direction towards Songwe boarder when on arrival at a place near Ujiji stream, he lost control of the vehicle and hit the deceased who was trying to cross the main road from the nearside of the road.

The deceased died due to severe head injury with multiple fractures as a result of the negligent driving of the first defendant.

As to the evidence, there was only one witness called to testify under oath and it was the plaintiff himself. In his testimony, he told the court that he earns a living by farming. That the deceased was a biological daughter to him. That he had a total of seven children and the deceased was the fifth. That she was in standard 6 and was brilliant, hardworking and of good behaviour both in class and home. That she was also a very productive member of his family and assisted him in his farming undertakings and other house chores.

The plaintiff further tendered in evidence the death certificate marked as **Exh. P2** and equally an abstract report marked as **Exh. P1** prepared by the road traffic police in support of the fact of the occurrence of the accident. His evidence was not controverted.

In cross examination the plaintiff stated that he did not pay for the police report but for the medical report. The same being paid for at MK3,500.00 but never got any receipt. Further on cross examination as to the number of children he has, he gave the list as follows:

1. Loveness Mapunda born in 1995
2. Elinesi Mapunda born in 1996
3. Brenda Mapunda born in 1997

4. Linda Mapunda born in 1999
5. Fatiya Mapunda born in 2005
6. Simon Mapunda born in 2008

It was the courts observation that the plaintiff never mentioned anything about having a wife or wives suffice to say that at one point in the course of the proceedings, when the court sought clarification on the year of births of the children which sounded abnormal i.e. 1995, 1996 and 1997, the plaintiff stated that some of the children are from another woman. Be that as it may not concern the court, it still has got a bearing on the allocation this court could award each dependent. This court has labored to bring this issue out as it feels that the plaintiff did not comply with s.8 of Statute law (Miscellaneous Provisions). The said provision states as follows:

“In every action brought by virtue of this Part, the plaintiff on the record shall be required, together with the statement of claim, to deliver to the defendant, or his legal representative, full particulars of the person or persons for whom, and on whose behalf, such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.”

This per the law cited above is the normal. The same is not true in the matter herein. As observed by Twea J (as he then was), this section is constantly overlooked by counsel and in illustrating what is exactly overlooked, the learned judge in ***The Administrator of Nkumba v Adventure Tours and Safaris and Another***, [1998] MLR at 402 referred to the case of ***Pym v Great Northern Railway Company*** (1863) 4B &S 396 at 407 and said:

“What is overlooked is that, while as only one cause of action is statutorily created, each dependant is entitled to damages for the loss resulting to him personally, consequently, each dependant has a separate cause of action and therefore, judgment debt.”

And relating to the case herein, counsel for the plaintiff did not even dare to bring to the attention of the court the list of dependents for purposes of apportioning the award. The

names only came to light by way of cross examination by counsel for the defendant. This court thinks it is high time such deliberate disregard for procedure changed. Asking for the names and bringing the same to the attention of the court by defence counsel does not in itself imply that they are automatically made the dependents. They ought to have been pleaded. Otherwise, this only leaves the court to speculate. Counsel should not assume. He ought to do what is required of him. The incomplete information given may read to the court apportioning the award to parties that were not strictly speaking the dependents of the deceased.

Further and on a relatively similar note and as alluded earlier the plaintiff did not mention whether he has a wife or indeed wives and therefore rendering the court uncertain as to the position of the mother of the deceased. Unless the circumstances explain otherwise, which is not the case here, justice would require that the biological mother and direct siblings of the deceased be the beneficiaries. It must therefore be put in clear terms that this is the approach this court will adopt as it proceeds with the assessment herein.

Be that as it may, damages for loss of dependency are calculated using what is commonly called the multiplier and multiplicand method. See. *Mallet vs. Mc Monagle*(1970)A.C. at 166,175. To come up with the multiplicand you take the monthly income of the deceased person and multiply it by 12 representing the number of months in a year. As for the multiplier you look at the number of productive years the deceased would have had had it not been for the wrongful death. The multiplier is adjusted down to take into account life contingencies that would have cut the dependency anyway and also for the fact that a lump sum is being given instead of periodic payments over years. From the product of the multiplier and multiplicand is made a reduction of a third representing the portion the deceased would have used on himself.

In the present case the deceased was not of employable age. As alluded earlier she was 12 years old. The father testified that she was assisting in household chores and in his farming endeavour. He however did not approximate as to how much he were to pay someone hired to do the same job if at all he needed to. This court is aware of the complication of calculation of a particular award in such cases. However be that as it may this court looked

at how situations as one before us here have been handled in comparable cases that ever visited the chambers of the previous registrars of this court. One clear example of such cases is that of *Vincent Mwakamo vs. Flexer Ngoma*, Civil Cause No.1519 of 1997 cited in *Lucy Munthali Njikhoh(Anne And Beatrice Njikhoh Deceased) vs. Shire Bus Lines*, Civil Cause No. 66 of 2002, where 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 development. 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(minimum wage) which was as at that time MK1,500.00 and to which half translated to MK750.00. In that case the deceased was 7years of age. Comparatively the deceased herein was much older. Though of unemployable age but at least mature enough to handle simple to relatively complex tasks such as farming as alluded to by the father in his evidence. As such on what figures to use, this court opts for half the minimum wage for the simple reason that despite the age difference both falls in the category of unemployable age.

The current monthly minimum wage is MK687.70 per day. This translates into MK17, 880.20 for the 26 working days of the month. Then half of this is MK8, 939.10. This implies that annual earnings would be MK107, 269.20. Now as earlier alluded the deceased was 12years old and considering latest World Health Organisation data as published in 2015, the current life expectancy for Malawi is pegged at 58. These courts therefore take it that the deceased would have lived for 46 more years. However the court reduces this number by 6 so as to cater for eventualities that may have reduced his life in any circumstances. And using the formula as describe earlier, the calculation becomes:

$MK107, 269.20 \times 40 \times \frac{2}{3}$ which translates to **MK 2,860,512.00** as amount of dependency and this makes the award of this court under this head.

The next award this court must consider is damages for loss of expectation of life. This at law is 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. This court 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 like herein died aged 12 years. That award was made in April, 2003. The exchange rate to the dollar then was at US\$1=91.7181 and this meant MK70,000.00 was equal to US\$760.87 and so converting to the current rate of US\$1= MK730.00, the same would translate to **MK555,435.10**. This court is however not bound by this award. It maintains its discretion and as earlier alluded, considering the period, we award the sum of **MK 700,000.00**. The plaintiff is therefore awarded a total sum of **MK3, 560,512.00**. As alluded earlier, to avoid injustice, this is to be apportioned equally between the father and the mother of the deceased.

The plaintiff also pleaded for special damages in the form of costs of medical report and police report. He however failed to prove his claim to the requisite standard and on that premise this court dismisses the same. The defendant is however condemned in costs.

Ordered in Chambers this 9th day of September, 2016, here at Blantyre, in the

Republic.



K. BANDA

ASSISTANT REGISTRAR