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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 1005 OF 2014

BETWEEN

**PETER CHILUNDU (Suing on his own behalf and on behalf of
James Kamowa, Deceased)**

PLAINTIFF

AND

EDWIN CHILUMBA

1ST DEFENDANT

REUNION INSURANCE COMPANY LIMITED

2ND DEFENDANT

CORAM

MATAPA KACHECHE

Assistant Registrar

Chikaonda

for the Plaintiffs

Alide

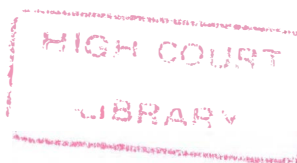
for the Defendants

Ngoma

Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

1. The plaintiff commenced this action claiming damages for loss of expectation of life and loss of dependency following the death of James Kamowa who died of injuries he suffered when a motor vehicle, Registration number BP 6488, Toyota Hiace minibus driven by the first defendant and insured by the second defendant hit him near Chigumula Church junction. The accident was attributed to the negligence of the first defendant.
2. A judgment in default of notice of intention to defend was entered against the defendants on 31st October 2014. On 3rd December, 2015 the matter came for assessment of damages. The plaintiff testified by adopting his witness statement. The defendants were represented but did not parade any witnesses. As it stands therefore the plaintiff's testimony went unchallenged.
3. It was testified that at the time of his death the deceased was 70 years old and was working as a guard and a farmer. There was no evidence of his earnings though.
4. Under section 3 of the Statute Law (Miscellaneous Provisions) Act, whenever the death of a person is caused by the negligence of another, the negligent person is liable to an action for damages. Section 4(1) of the same Act provides that such action shall be for the benefit of the wife, husband, parent and child of the person whose death has been so



Triplicate

caused. In other words the deceased person's dependants are compensated for loss of dependency.

5. I will tackle the claim for loss of expectation of life first. The general principle is that a claim for loss of life is maintainable on behalf of the deceased. It is based on the notion that due to the injuries suffered; the deceased would not have enjoyed his or her life to the same extent as when she was in good health- *Benham v Gambling* [1941] 1 All ER 7. Damages under this head cannot be quantified in monetary terms. As such Courts use common sense and reference to awards of similar nature to award these damages without assigning actual value to the years lost.

6. Consideration is had on the victim's age and prospects in life; allowance is given to the vicissitudes of life. In *Benham v Gambling* in considering the age of the victim of the accident Viscount Simon LC said [1941] 1 All ER at page 12:

"... the thing to be valued is not the prospect of length of days, but the prospect of a predominantly happy life. The age of the individual may, in some cases, be a relevant factor—for example, in extreme old age the brevity of what life may be left may be relevant—but, as it seems to me, arithmetical calculations are to be avoided, if only for the reason that it is of no assistance to know how many years may have been lost unless one knows how to put a value on the years. It would be fallacious to assume, for this purpose, that all human life is continuously an enjoyable thing, so that the shortening of it calls for compensation, to be paid to the deceased's estate, on a quantitative basis. The ups and downs of life, its pains and sorrows as well as its joys and pleasures—and that makes up 'life's fitful fever'—have to be allowed for in the estimate. In assessing damages for shortening of life, therefore, such damages should not be calculated solely, or even mainly, on the basis of the length of life which is lost."

7. The other head of damages is loss of dependency. This is a pecuniary loss and the Court has evolved a particular method for assessing the value of the dependency, or the amount of pecuniary benefit that the dependant could reasonably expect to have received from the deceased in the future. This amount is calculated by taking the present annual figure of dependency, whether stemming from money or goods provided or services rendered, and multiplying it by a figure which, while based upon the number of years that the dependency might reasonably be expected to last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years. See *McGregor on Damages*, 15th Edition. Para 1557.
8. Lord Pearson set it out concisely in *Taylor -vs. - O'Connor* [1971] AC 115 at 140. He said:

"There are three stages in the normal calculation, namely; (i) to estimate the loss of earnings, i.e. the sums which the deceased probably would have earned but for the fatal accident; (ii) To estimate the lost benefit, i.e. the pecuniary benefit which the dependants probably would have derived from the lost earning, and to express the lost benefit as an annual sum of the period of the lost earnings; and (iii) to choose the appropriate multiplier which, when applied to the lost benefit

Triplicate

expressed as an annual sum, gives the amount of the damages which is a lump sum."

9. The deceased herein was a farmer and was employed as a guard. There was no evidence as to his earnings. In such a case the court ought to use the statutory minimum wage of K687.70 per day as the deceased's earnings for purposes of calculation loss of dependency. I will use a 24 day month as the unit of calculation
10. The deceased was 70 years of age. He had already passed normal retirement age. Nevertheless from his activities the dependants expected to benefit something in terms of dependency. We cannot tell how long the deceased could have lived. In the circumstances I adopt the suggestion by the plaintiff that we use four as the multiplier.
11. The dependants are expected to benefit $\frac{2}{3}$ of the deceased's earnings as the amount of their dependency. There are therefore entitled to $K687.70 \times 24 \times 12 \times 4 \times \frac{2}{3}$. The total comes to K528, 153.60.
12. On the loss of expectation of life it is clear that the deceased was energetic and there is no suggestion that he was suffering from any ailment or that he was facing some particularly difficult life making his life less pleasurable. I award K1, 000, 000.00 on this head.
13. I also award K3, 000.00 cost of procuring police report.
14. The total award comes to K1,531, 153.60
15. I also award costs of these proceedings

Made in Chambers this

day of **May** 2017



CC Matapa Kacheche
ASSISTANT REGISTRAR