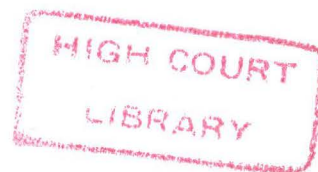


REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 99 OF 2011



BETWEEN:

LACKSON KWERANI (Suing on his own behalf as father of Saukila Kwerani (deceased) and on behalf of other dependants of the deceased..... CLAIMANT

AND

MCDONALD MASAMBA.....1st DEFENDANT

PRIME INSURANCE COMPANY LTD.....2nd DEFENDANT

CORAM: T. SOKO: ASSISTANT REGISTRAR

MR KALUA: COUNSEL FOR THE CLAIMANT

CHIPEMBERE: COUNSEL FOR THE DEFENDANT

MISS MUNTHALI : COURT CLERK

ASSESSMENT ORDER

BACKGROUND

This is an order on assessment of damages following an order by Honourable Justice Tembo dated 12th April 2018 to enter judgment on liability against the defendants. The claimant's claim is on damages for loss of dependency, loss of expectation of life, special damages as pleaded and costs of the action.

The facts in brief avers that on 8th November 2009, the deceased Saukila Kwerani was a passenger in a motor vehicle registration number PE 1400 Hino Lorry 5 Tonner which was being driven by the 1st defendant's servant along Chitakale/ Phalombe road when at Nsuka bridge it went to the extreme nearside of the road where it entered into the river, overturned and threw away the deceased who died on the spot.

ISSUE

Quantum of damages to be paid to the claimant

EVIDENCE

In evidence the claimant who adopted his witness statement stated that the deceased was his son and he was 21 years old at the time of his demise. The claimant further stated that on 8th November 2009, the deceased went at the football match with his friends at Goliati Thyolo and had an accident when they were coming back. The claimant explained that he received a phone call around 20:00hours that the deceased and his folks had been involved in an accident. The claimant and his friends rushed to Mulanje Hospital where it was discovered that it was true. The claimant tendered the police report and death report as part of evidence.

SUBMISSIONS

In submissions, counsel for the claimant prays for a sum of K2, 000,000.00 damages for loss of expectation of life and K6, 002,880.00 damages for loss of dependency. Further, Counsel prayed for a sum of K2, 000.00 being the cost of the police report and K1, 000.00 being the cost of the death report. Counsel cited a number of authorities to support his prayer. I must appreciate Counsel for the well-founded authorities which have assisted the Court to arrive at the proper decision.

GENERAL LAW ON DAMAGES

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been if it would have not been for the tort committed. See Namwiyo v Semu (1993) 16 (1) MLR 369.

In calculating damages , therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. See Admiralty Commisioners vs S.S Valeria (1992) 1 A.C. 242 at 248.

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329of 2016 the Court quoting Wright vs British Railway Board 1938 AC 1173, 1177 stated that:

'Non-economic loss., is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'

In the case of **City of Blantyre vs Sagawa** the court said the following:

*'It would appear to us that if the award is to be conventional, **an award for a similar injury** should be comparable and should, to some extent, be influenced by amounts awarded in the previous case, either in the same or neighboring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.*

LOSS OF EXPECTATION OF LIFE

In the case of **Aaron Amosi (on his own behalf and on behalf of the estate of Teleza Amosi and Lanjesi Life vs Prime Insurance Company Limited Personal Injury Cause No. 133 of 2013 PR (unreported)** the Court stated that the claim is based on the notion that due to the injuries suffered the deceased would not have enjoyed his life to the same extent as when he was in good health .see Benham vs Gambling (1941) ALLER 7. The damages are non-pecuniary and the Court use common sense, reference being had to the earliest awards without actually assigning value to the years lost. All relevant factors such as the age of the individual, prospects of life and life expectancy are to be considered. It must be remembered that human life is not continually enjoyable so as to deserve compensation for any shortening thereof on quantitative basis. Life's vicissitude are therefore to be taken into consideration too.

In Mbaisa vs Ibrahim Ismail Brothers the Court stated that this action is brought for the benefit of the estate and must be brought by the personal representative only. **In Binwell Tembetani and others vs Malasha Holdings limited t/a Malasha Bus Company and others** it was stated that damages for loss of expectation of life accrues to the estate of the deceased and for that reason can only be claimed by an executor, administrator or personal representative. It was further stated that a plaintiff cannot bring such action without obtaining letters of administration.

Section 7 of the Statute Law (Miscellaneous provisions) Act:

Where, in any case intended and provided for by this Part, there shall be no executor or administrator of the person deceased, or if no action is brought by such executor or administrator within six months after the death of such deceased person, an action may be brought by and in the name or names of all or any of the persons for whose benefit such action would have been brought, if it had been brought by and in the name of such executor or administrator, and every action so brought shall be for the benefit of the same person or persons as if it were brought by and in the name of such executor or administrator.

In the light of Section 7, the claimant is entitled to bring the present action.

LOSS OF DEPENDENCY

Makifale Dimingu and others vs The Attorney General personal injury cause No. 749 of 2012. (High Court) (Unreported) the court held that:

Damages for loss of dependency are calculated in reference to a reasonable expectation of pecuniary benefit as of right or otherwise from continuance of life. 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 Ntelera vs Sabot Hauliers 15 MLR 373 and Mallet vs Mc Monagle 1970 AC 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 it were not for the wrongful death. As rightly pointed out by the 6th plaintiff in order to arrive at the level of dependency, the multiplicand is multiplied by the multiplier and the figure is 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.'

DETERMINATION

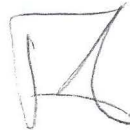
In the case of **Lemani John (Suing on his own behalf as father of Magret John (deceased) and on behalf of other dependants of the deceased and Paudala (suing on his own behalf as father of Yohane Mtuwa (deceased) and on behalf of other dependants of the deceased vs Edges Maulidi, Chancellor College and United General Insurance Co. Ltd Personal Injury Cause No. 553 of 2017(unreported)** The deceased persons were 24 and 20 years old respectively when they died. They both lived a happy life and used to run on their parents errands. The 2nd claimant was a student and expected to achieve more with his education. The Court awarded a sum of K1, 500,000.00 damages for loss of expectation of life. Awards were made on 18th July 2018. In the present matter, the deceased was 21 years old and a student when he died. He was coming from a football match which means he was still energetic when he died and had a happy life. In the light of the above I award a sum of K1, 500,000.00 damages for loss of expectation of life.

On loss of dependency life expectancy in Malawi is pegged at 55 which means the deceased had 34 more years to live. Life has its own hiccups and one would not tell if the deceased would have reached 55 years of age considering the rapidness of death in our present time. In this circumstance it would be reasonable to

state that the deceased had 28 more years to live. There is no evidence as to how much he was earning per month if at all he was earning something. As such the Court is compelled to use the minimum wage of K25, 012.00 as the multiplicand. Considering the multiplier and multiplicand formula the Court awards a sum of K5, 602, 688.00 damages for loss of dependency.

There is no substantial evidence that the claimant incurred cost of death and police reports.

Pronounced in chambers on this 23rd day of October 2018.



T. SOKO
ASSISTANT REGISTRAR