



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 204 OF 2017

BETWEEN

MRS NJIKHO (On her own behalf and on behalf of the

Dependents of the estate of Lonjezo Njikho (deceased)) CLAIMANT

AND

ATTORNEY GENERAL (MALAWI POLICE SERVICE)DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Mhango, of Counsel for the Claimant

Counsel for the Defendant, Absent

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The claimant brought proceedings against the defendant claiming damages for loss of dependency and expectation of life, special damages and costs of the action. Judgment was entered for the claimant on 2nd November, 2017. The matter has now come for assessment of damages.

The Evidence

The proceedings have been brought by the claimant who is the widow and beneficiary of the estate of Lonjezo Njikho who died in a road accident involving Presidential motorcade on 6th December, 2014 at around 11:45 hours. The registration of the motor vehicle involved in the accident is MP 2252 Toyota Land Cruiser. The accident occurred due to the negligence of the driver who lost control of the motor vehicle which then flew and hit a tree 50 metres away from the road.

The deceased was aged 28 years at the time of his death and was working in the Malawi Police Service. His pay-slip dated 25th November, 2014 shows that his basic pay was K57,040.00 and there was Special Salary Arrears of K14,788.00. He received a sum of K71,828.00 as Gross Pay. He was the breadwinner of his family and used to take care of his children. At the time of his death, he was a healthy and happy person and had high prospects of living much longer. By reason of his death, the expectation of his life was shortened and his estate suffered loss and damage.

The special damages pleaded were costs for obtaining Police report and death report amounting to K3,000.00 and K5,000.00 respectively. The judgment that was entered for the claimant on 2nd November, 2017 as regards special damages is to the effect that the defendant should pay the claimant special damages as pleaded. The claimant has, in the skeletal arguments, claimed a sum of K300,000.00 as funeral expenses.

General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983]**

2 AC 773. The court, however, considers the time the awards were made and currency devaluation – **Kuntenga and Another v Attorney General** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved – **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC).

Loss of Expectation of Life

Damages for loss of expectation of life are claimable by a claimant where his injuries have reduced his expectation of life – **Flint v Lovell** (1935) 1 KB 354. They are extended to actions which have survived for the benefit of the deceased's estate and is thus available to the personal representatives of his estate.

In assessing the damages, the thing to be valued is not the prospect of length of days but of a predominantly happy life- **Venham v Gambling** [1919] AC 157. The damages are supposed to be modest and the sum is supposed to be conventional one – **Chikoti v Attorney General** [2006] MWHC 28. In **Jabulani Mbesa [on his behalf and on behalf of dependents of Mrs. Neles Linly Mbesa (deceased)]** Personal Injuries Cause No. 117 of 2014 the deceased died aged 59 years. The court made an award of K900, 000.00 as damages for loss of expectation of life.

The claimant lost her husband as a result of the accident. The deceased lived a predominantly happy life with his family. The beneficiaries of the deceased estate have been deprived the enjoyment of such a life. In view of the decided cases herein cited, and in view that the awards were made some time back, I award the claimant a sum of K1,500,000.00 as damages for loss of expectation of life.

Loss of Dependency

The foremost thing in this head is the amount of dependency. That is ascertained by deducting from the wages earned by the deceased the estimated amount of his own personal and living expenses. In Malawi this is estimated at a third of the deceased's income - **Chikoti v Attorney General** (supra). Where the deceased's monthly income is unascertained, the court awards a sum equivalent to what a

domestic worker earns – Kenson Shapu v NICO General Insurance Company Limited Civil Cause Number 222 of 2007 (unreported). In calculating the damages, courts use the multiplicand and multiplier formula. The multiplicand is a figure representing the deceased's monthly earnings while the multiplier is the figure representing the estimated number of years the deceased would have lived if not for the wrongful death. The product of the multiplicand and the multiplier is multiplied by 12 representing the number of months in a year.

The World Health Organization puts the life expectancy for males in Malawi at 56.7 years - www.worldlifeexpectancy.com/malawi-life-expenctancy. The court takes into account the fact that there would have been other factors that would have shortened the deceased's life.

The deceased was aged 28 years at the time of his death. Had it not been for his death he most probably would have lived into his 50s. This regard having been had to the statistics on life expectancy in Malawi that pegs it to around the range of 56.7 years for men. The deceased possibly had around 28 more years to live had it not been for his death. That figure of 28 years shall be reduced to cater for eventualities of life that may have reduced his life expectancy in any event. This court makes a reduction of 8 years and so adopts the multiplier of 20.

The pay-slip for deceased shows that he received basic pay of K57,040.00 and Special Salary Arrears of K14,788.00. There is no evidence to show what the Special Salary Arrears were for and if they were part of the basic salary. This court, therefore, finds that the basic pay for the deceased at the time of his death was K57,040.00 per month. The award under this head would, therefore, be $K57,040.00 \times 12 \times 20 \times 2/3$ which is K9,126,400.00.

Special Damages

Special damages are supposed to be pleaded and proved. The claimant in her skeletal arguments is claiming damages for funeral expenses. The claimant did not plead the funeral expenses. No judgment has been entered in respect of them. The judgment that has been entered is for the special damages that were pleaded

which are costs for obtaining the Police and death report. As such there is no need for their assessment. They are, therefore, dismissed.

I award the claimant a sum of K3,000.00 as costs for obtaining the Police report and K5,000.00 as costs for obtaining the death report.

Conclusion

The claimant is awarded a total sum of K10,634,400.00 and costs of the action.

Pronounced in court this 1st day of March, 2018 at Blantyre.



E. BODOLE (MRS)

ASSISTANT REGISTRAR