



The Judiciary

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 691 OF 2014**

**Between**

**ALEX CHIGWALE (Suing for and on behalf of the Beneficiaries of the estate of  
Yvonne Chigwale- Deceased) ..... CLAIMANT**

**-and-**

**ELECTRICITY SUPPLY CORPORATION OF MALAWI..... DEFENDANT**

---

**CORAM: A.J. Banda, Assistant Registrar**

Mr. Mickeus, for the Claimant

Mr. W. Kalua, for the Defendant

Ms. M. Galafa, Clerk/ Official Interpreter

---

Banda, A.R

**ASSESSMENT ORDER**

**1. Background**

The two parties agreed on the issue of liability and caused to be entered in the proceedings a consent judgment in favour of the claimant, and against the defendant in respect of the claimant's claims for damages for loss of expectation of life, loss of dependency funeral expenses and costs of the action. In the consent judgment endorsed by the Assistant Registrar on 20<sup>th</sup> March, 2018, the parties agreed to have the damages assessed by the registrar if not agreeable. The claimant obtained a notice of assessment of damages that was returnable on 17<sup>th</sup> May, 2018.

## **2. Evidence**

The claimant called one witness for the assessment hearing, the mother of the deceased by the name of Mrs. Chrissy Chigwale. Chrissy Chigwale told the court that her daughter Yvonne Chigwale was electrocuted by an energized stray wire as she lawfully walked along a path within Machinjiri township and she died on the spot. She said that Yvonne was in Primary school and was doing well in standard 7. She also said that her daughter was enjoying very good health before she died. She said her daughter was doing household chores such as drawing water, mopping the house and selling cookies that the witness was baking.

Chrissy Chigwale said that with the death of Yvonne the family had lost a lot as she was also a source of comfort. She said the family spent around K 70, 000.00 as expenses for the funeral ceremony of Yvonne, for which the family could not get receipts. She also said the family appreciated the help the defendant did such as provision of a coffin and foodstuffs for the funeral.

In cross examination, Chrissy Chigwale said that it was true that her child died in the year 2008 and that she was 12 years old at the time of death. She also said that there were no receipts attached to her statement. She lastly said that ESCOM had helped with the funeral expenses by providing a coffin, food and also a motor vehicle for transport.

## **3. Issue**

The only issue in this matter at this stage is the amount of damages payable for loss of expectation of life, loss of dependency and recovery of funeral expenses.

## **4. Law and Facts**

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses she has suffered. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff [now called the Claimant], as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

#### **4.1. Loss of Expectation of Life**

Awards for claims of loss of expectation of life takes into account the number of years a deceased person was expected to live without necessarily attaching value to the years but that the claimant enjoyed a predominantly happy life. Generally, courts consider the country's life expectancy when making such an award- **Samuel Chawanda v. Attorney General Civil Cause No. 3556 of 2002 High Court, Principal Registry (unreported)**. The court also factors in life's ups and downs. It is a fact of life that misfortunes abound in the human realm that lessens a person's natural length of life- **Aaron Amosi and Another v. Prime Insurance Company Limited, Personal Injury Cause no. 133 of 2013, High Court, Principal Registry**.

I have looked at a plethora of cases on this head. The damages are ranging between K900,000.00 and K1, 800,000.00. For instance, in the case of **Masauko Ephraim (suing on his own behalf and on behalf of other dependents of the estate of Shadreck Banda, Deceased) v. Prime Insurance Company Limited, Personal Injury Cause Number 658 of 2012**, K900,000.00 was awarded as damages for loss of

expectation of life. In the case of **Esther Kassim (suing on behalf of the estate of Losani Willy, deceased) v Stanley Dimusa and Prime Insurance Company Limited Personal Injuries Cause Number 56 of 2015**; an award of K1, 200,000.00 was made. In **Anne Chilanga (suing on behalf of the beneficiary of Friday Nyopola (deceased) v Duncan Nyalugwe and Prime Insurance Company Limited Personal Injury Cause Number 659 of 2011** an award of K1, 500,000.00 was made as damages under this head. In the case where a boy had his life wrongfully terminated at a tender age of 12, the court awarded K1, 800,000.00- **Lastone Chidule (suing on his own behalf and on behalf of other dependants of Mphatso Chidule) v. ESCOM Limited Personal Injury Cause No. 947 of 2015**. This award was made in May, 2018. In that regard, I award the claimant **K 1, 800,000.00** in this matter, as damages for loss of life expectancy.

#### **4.2. Loss of Dependency**

Courts use a multiplicand and multiplier formula to come up with an award for loss of dependency. The multiplicand is the figure representing the deceased's monthly earnings which is also multiplied by the figure 12, being the number of months in a year. The multiplier is an estimated number of years the deceased would have lived if it were not for the wrongful death. There are different approaches to finding the multiplicand where the deceased is a minor who due to age was not in any formal employment in which the minor was earning an income. In the case of **Samuel Chawanda v. Attorney General Civil Cause No. 3556 of 2002 High Court, Principal Registry (unreported)** the honourable registrar Tembo as he then was used a quarter of the domestic servant's wage, normally equated to the minimum wage applicable as the multiplicand, using the precedent set in the case of **Libana v. Attorney General Civil Cause No. 296 of 1998, High Court, Principal Registry (unreported)**.

Justice Katsala in the case of **Mr. Phillip Banda v. Alfred Mhone, Civil Cause Number 507 of 2002, High Court Principal Registry (unreported)** used the material time's half of the annual industrial wage as the multiplicand. The approach he adopted

from the Registrar in the case of **Vincent Mwakamo v. Flexer Ngoma Civil Cause Number 1519 of 1997 (unreported)**.

In most cases a third of the income is taken away as representing the sum of money that the deceased would have used for themselves as opposed to the rest as representing what would have been spent on the dependants. It would appear that for a deceased who was a minor that should not be the case as the Phillip Banda case, which is binding on me, will show, where the only taxation on the annual income was the dividing it up in two.

It would be fair in my view, as the loss of dependency suffered is not only in the time immediately after the death but futuristic as well, to the time of life expectancy, minus of course time taken as allowance for life's misfortunes. Over the period of years, the claimant's deceased benefactor would have earned the income had it not been for the wrongful death, the industrial wage would be changing too due to loss of value of the currency and other labour and economic related factors. In fact, an individual's worth in the industry goes up with experience and qualification. The deceased was in school. It would not be an unusual expectation that he would have attained qualifications and overtime experience that would have enabled him to earn above the minimum wage. The current minimum wage therefore is more just than the one obtaining at the time of death in my opinion.

The current minimum wage that took effect on 1<sup>st</sup> July, 2017, as revised by the Minister of Labour under section 54 of the Employment Act is K962.00 per day. Normally domestic workers work 6 days a week and there are four weeks a month. I will round off the minimum monthly wage at K25, 000.00. Half of that is K12, 500.00, and this is our multiplicand. Life expectancy at the time of the deceased's death, in the year 2008, according to UN Country Statistics was 54.29 years for females, and 52.80 years for males. Yvonne Chigwale died at the tender age of 12. She was expected to live for 42 more years. I will subtract 2 years to cater for life's events, but also the fact that the sum will be paid as a lump. The multiplier is therefore 40. As such the damages

awardable for loss of dependency is K12,500.00 multiplied by 12 (the annual income) multiplied by 40, which is **K 6, 000,000.00**.

#### **4.3. Funeral Expenses**

The claimant's witness did admit in cross examination that she did not attach any receipts for the claim for funeral expenses. Funeral expenses are special damages that must be specifically proved. However, it is not fatal at all times when receipts are not exhibited in court. If the court finds the evidence of expenses having been incurred to be believable on the balance of probabilities, then the expenses are proved- see the case of **Renzo Benetollo v. Attorney General and National Insurance Company Limited, Civil Cause No. 279 Of 1993, High Court, Principal Registry (unreported)**. Chrissy Chigwale did state in re-examination that the commodities and services that made them incur expenses for the funeral of Yvonne was from providers that normally do not issue receipts. I do believe that **K70,000.00** which is reasonable was incurred as expenses for the funeral and I do award that amount to the claimant.

#### **5. Conclusion**

The claimant is awarded a total sum of **K7, 870,000.00** as damages for loss of life expectancy and loss of dependency, and funeral expenses. The claimant is also awarded costs of the assessment. The costs shall be assessed by the registrar if the parties cannot agree the amount.

Made this 7<sup>th</sup> day of August, 2018.



Austin Jesse Banda

**ASSISTANT REGISTRAR**