



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 398 OF 2017**

**BETWEEN**

**CHIPILIRO MTEWA (Suing as the beneficiary of the**

**Deceased Estate of PATIENCE MTEWA ..... CLAIMANT**

**AND**

**CHRISTIAN CHIVUNDULA ..... 1<sup>ST</sup> DEFENDANT**

**PRIME INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR**

Khan, of Counsel for the Plaintiff

Counsel for the Defendant, absent

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimant brought proceedings against the defendants claiming general damages, damages for pain and suffering, loss of expectation of life, loss of dependency, loss of amenities of life, and costs of the action. Judgment on liability against the defendants was entered on 9<sup>th</sup> April, 2018.

## The Evidence

The claimant is a beneficiary of the estate of Patience Mtewa, deceased. The deceased was involved in an accident on 12<sup>th</sup> November, 2017. She died as a result of the accident. At the time of the accident, the deceased was aged 3 months old and was enjoying a vibrant happy health life.

The claimant was a proud father of the deceased. Her birth brought so much joy in his family. He did not contemplate that death would take her at such a young age. He had all the hope that the deceased would grow up and take care of her family. He prayed to the court to award him damages for loss of expectation of life and loss of dependency, and costs for obtaining the Police and medical reports amounting to K23,000.00.

## 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. In **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded.

### 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.

### 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 difficulty arises when the deceased is a child of tender age. In **Samuel Chawanda on behalf of M. Chawanda (Deceased) and Other Dependents v the Attorney General** Civil Cause No. 3556 of 2002 the court stated that

*“The obvious difficulty herein is that the deceased could not be employed due to his tender age which then has an implication on his earning capacity and consequently on the dependency on him by the plaintiff and others herein.*

*But this state of affairs does not mean that an award for loss of dependency cannot be made."*

In this case the deceased died aged 12 years. The court adopted the domestic servants' minimum wage as the multiplicand.

The World Health Organization puts the life expectancy for females in Malawi at 59.9 years - <http://www.lifeexpectancy.com/malawi-life-expectancy>. The court takes into account the fact that there would have been other factors that would have shortened the deceased's life.

### Analysis

The claimant lost his daughter as a result of the accident. The deceased had lived a predominantly happy life with her family. The claimant has 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.

The claimant's daughter was aged 3 months at the time of her death. She might have lived into her 50s had she not died. I have regard to the statistics on life expectancy in Malawi that pegs it to around the range of 59 years for women. The deceased possibly had around 59 more years to live had it not been for her death. That figure of 59 years shall be reduced to cater for eventualities of life that may have reduced her life expectancy in any event. She was of tender age and had yet to go through the under-five year period, adolescence and later child bearing age which are threats to life itself. I make a reduction of 25 years and so adopts the multiplier of 34. I adopt the approach in **Chawanda on behalf of M. Chawanda (Deceased) and Other Dependents v the Attorney General** (supra). The minimum wage or domestic worker's earnings which is K25,012.00 would be used as a multiplicand since there is no evidence as to how much the deceased was earning. The award under this head would, therefore, be  $K25,012.00 \times 12 \times 34 \times 2/3$  which is K6,803,264.00.

### Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount he is claiming for obtaining the



medical report. If some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the claimant had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just.

I, therefore, award the claimant a sum of K2,500.00 as costs for obtaining the medical report. I also award the claimant a sum of K3,000.00 as costs for obtaining the Police report.

### Conclusion

The claimant is awarded a total sum of K8,308,764.00 as damages. The claimant is also awarded costs of the action.

Pronounced in court this 10<sup>th</sup> day of July, 2018 at Blantyre.



**E. BODOLE (MRS)**

**ASSISTANT REGISTRAR**