



REPUBLIC OF MALAWI

## IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 7 OF 2017



### BETWEEN:

HANNAH MASTER (suing as representative of the Estate of Master Henry, deceased, and on behalf of the dependants).....CLAIMANT

### AND

MEDSON KABINGU..... 1<sup>ST</sup> DEFENDANT

PRIME INSURANCE CO. LTD.....2<sup>ND</sup> DEFENDANT

### CORAM

Mrs T. Soko : Assistant Registrar  
Mr Kadyampakeni : Counsel for the claimant  
Mr Chipembere : Counsel for the defendant  
Mrs Munthali : Court Clerk

### ORDER ON ASSESSMENT OF DAMAGES

#### BACKGROUND

This is an order of assessment of damages following a judgment on liability entered on 6<sup>th</sup> March 2018. The Claimant's claim is for damages for loss of expectation of life, damages for loss of dependency and costs of the action. The facts in brief are that on 4<sup>th</sup> April 2016, the 1<sup>st</sup> defendant was driving a Toyota Hiace Minibus registration Number CZ 5551 from the direction of Limbe to Mwanza with 15 passengers on board. On arrival at Kabano Village, the minibus swerved and overturned three times. The deceased died later on.

#### EVIDENCE

In evidence the Claimant who was the sole witness stated that on 4<sup>th</sup> April 2016, the deceased left home in Mwanza as he was on duty. Around 14:00 hours the claimant received a message that the deceased was involved in an accident. She rushed to QECH where the deceased person had been taken to. The deceased was discharged on the same day. The deceased kept on taking medication and on 18<sup>th</sup> June 2016 the deceased person passed away after he was taken to Mwanza District Hospital. The claimant stated that the claimant was a minibus driver and a businessman. The claimant shaded more light that the deceased used to sell diverse stuffs such as food stuffs and radio batteries at Mwanza Boma. His monthly net income from the business was K100, 000.00. The deceased left a 3 year old child. The claimant produced and tendered a medical report and death report as part of evidence.

In cross examination, the claimant stated that she did not bring any evidence regarding the earnings of the business. The claimant also stated that she did not obtain any letters of administration.

## **SUBMISSIONS**

In submissions, the Claimant prayed for a sum of K18, 500,000.00 as damages. Counsel for the claimant cited a case of Annie Chilinga vs Duncan Nyalugwe and Prime Insurance Co. Ltd where the Court awarded a sum of K1, 500,000.00 damages for loss of expectation of life and K2, 040,000.00 for loss of dependency. The deceased was 37 years of age when he passed away.

The defendant did not file submissions despite being given 14 days to submit the same.

## **ISSUE**

Quantum of damages

## **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.

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 this matter the claimant being the wife of the deceased was entitled to bring this matter as if he was the administrator since 6 months had lapsed. Besides, it would be miscarriage of Justice to deny the wife of the deceased compensation based on that ground. Fairness must be done.

#### 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 matter at hand, the deceased died at the age of 33. He was still vigorous and youthful when he died. He was able to provide for the family through his work and I am sure he lived a happy life. The evidence shows that the claimant had business which means he had good plans in his life. All was lost upon his death.

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329 of 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 vicissitudes 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.

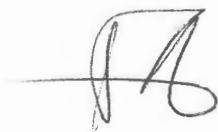
On the foregoing reasons and considering the authority cited by Counsel for the Claimant the Court awards a sum of K2, 000,000.00 as damages for loss of expectation of life.

On loss of dependency, the deceased died at the age of 33 as earlier alluded. Life expectancy is pinned at 55 which indicates that he had 22 more years to live. However, life has its own deviations and in this day and age living up to the age of 55 is a blessing. Considering the vicissitudes of life I am constrained to put the age at 20. Besides, there is no substantial evidence that the claimant was earning K100, 000.00 per month. As such the Court will use a minimum wage which is K25, 000.00 as a multiplicand. Using the multiplicand/multiplier formula the Court awards a sum of K4, 000,000.00 as damages for loss of dependency.

In total the Court awards a sum of K6, 000,000.00 damages.

Costs are for the claimant.

Pronounced in chamber on this <sup>8<sup>th</sup></sup> day of August 2018.



**T. SOKO**

**ASSISTANT REGISTRAR**