



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 885 OF 2015

BETWEEN

**ALFRED KAPOKOSA (Suing as beneficiary of the Estate
of Luciya Kapokosa) CLAIMANT**

AND

GOLI NYIRENDA 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Khan, of Counsel for the Claimant

Counsel for the Defendant, absent

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendants claiming damages for loss of expectation of life, loss of dependency, costs for procuring death and Police reports, and costs of the action. Judgment on liability was entered for the claimant on 29th May, 2018. The matter has now come for assessment of damages.

The Evidence

The claimant commenced this action as a beneficiary of the estate of Luciya Kapokosa, deceased. On 12th March, 2015 the deceased was on board motor vehicle registration number BN 2129 Toyota Hiace minibus. It was being driven by the 1st defendant from the direction of Ntaja heading towards Liwonde along Liwonde-Ntaja road. Upon arrival at or near Molipa Escarpment, the 1st defendant lost control of the said motor vehicle which went to the extreme nearside where it overturned.

As a result of the accident, the deceased sustained severe hemorrhage from which she died. The claimant lost his wife and as such, he feels very lonely as he did not contemplate that death would take her so early. The deceased was aged 50 years at the time of her death. She was enjoying a predominantly health life but for the wrongful death.

The claimant spent a sum of K13,500.00 in procuring Police and death reports.

The claimant is, therefore, seeking damages for loss of dependency and expectation of life, the sum of K13,500.00 as costs for procuring Police and death reports, and costs of the action.

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.

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 loss of expectation of life, loss of dependency etc. 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.

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 **Fayiness Nyalugwe (suing on her own behalf and on behalf of the beneficiaries of the Estate of Mc Donald Nyalugwe, Deceased) v Prime Insurance Company Limited** Personal Injury Cause No. 416 of 2013 the court on 26th June, 2017 awarded the 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 No. 222 of 2007. 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 females in Malawi at 59.9 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.

Analysis

The claimant lost his wife as a result of the accident. The deceased had lived a predominantly happy life with her family. The beneficiaries of the deceased estate have been deprived the enjoyment of such a life. In view of the decided cases herein cited, I award the claimant a sum of K1,500,000.00 as damages for loss of expectation of life.

The deceased was aged 50 years at the time of her death. She might have lived into her late 50s had she not died. This court takes into consideration the statistics on life expectancy in Malawi that pegs it to around the range of 59.9 years for women. The deceased possibly had around 9 more years to live had it not been for her death. That figure of 9 years shall be reduced to cater for eventualities of life that may have reduced her life expectancy in any event. This court makes a reduction of 3 years and so adopts the multiplier of 6. 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 $K25,012.00 \times 12 \times 6 \times 2/3$ which is K1,200,480.00.

Conclusion

The claimant is awarded a total sum of K2,700,480.00 as damages for loss of expectation of life and dependency. He is also awarded a sum of K13,500.00 as costs for procuring Police and death reports, and costs of the action.

Pronounced in court this 5th day of October, 2018 at Blantyre.



E. BODOLE (MRS.)

ASSISTANT REGISTRAR