



REPUBLIC OF MALAWI
 IN THE HIGH COURT OF MALAWI
 PRINCIPAL REGISTRY
 PERSONAL INJURY CAUSE NO. 336 OF 2017

BETWEEN

CHESTER JOHN (suing for himself and on behalf of other beneficiaries of the estate of Daniel John).....CLAIMANT

AND

JOHANNES STEPHANUS FREDRICK.....1ST DEFENDANT
 NICO GENERAL INSURANCE COMPANY LIMITED.....2ND DEFENDANT

CORAM:

T. SOKO, ASSISTANT REGISTRAR

Mr Malijani, Counsel for the claimant

Mr Chikaonda, Counsel for the Defendant

N. Munthali, Official Interpreter

ASSESSMENT ORDER

INTRODUCTION

This is this court's order on assessment of damages pursuant to a default judgment obtained on 10th July, 2017 in favour of the claimant. The claimant is claiming damages for loss of expectation of life, loss of dependency, special damages and costs of the action.

EVIDENCE

The only claimant witness was Chester John from Kasamiza Village, Traditional Authority Nsamila, Balaka district who told the court that he was the father to the deceased.

In his witness tendered and marked Exhibit CW1 and adopted under oath in its entirety, he averred as follows;

That on 29th October, 2016 Daniel John then aged 4 died in a road traffic accident at Lukudzi area along Zalewa-Chingeni road when he was hit by a motor vehicle (Reg. No. CK 409.) at that material time driven by the 1st defendant and insured by the 2nd defendant.

As a result of the accident the deceased sustained several head injuries and died on the same spot. The accident and resultant death were caused by the negligent driving of the vehicle by the 1st Defendant.

ISSUE

The quantum of damages payable for pain, suffering, loss of amenities of life and disfigurement.

THE LAW

LOSS OF EXPECTATION OF LIFE

An action for loss of expectation of life is at law maintainable on behalf of the estate of the deceased and the prime factor always to be kept in mind is the prospect of predominant happy life. *See Rose v Ford (1937) A.C.826.*

As rightly pointed out by the claimant, the award to be made in such an action is arrived at using the same principles used in arriving at claims for personal injuries. *See Cain v Wilcock (1968) 2 All ER 817.* The reason is that loss of life expectation is an aspect that cannot be quantified in monetary terms by use of any known mathematical formula. The prime factor always to be kept in mind is the prospect of a predominantly happy life. *See Benham v Gambling (1941) AC 157.*

In the present case, this court has considered comparable awards in cases similar to the instant one like the case of *Paul Chamanza (on his own behalf and of the Dependents of Mrs. Ivy Chamanza, Deceased), Elaon Dzuwa, Chifundo Mnenula v Edward Nyirenda & Prime Insurance Company Limited Civil Cause Number .309 of 2013*, where the Court awarded K1, 120,000.00 to the claimant.

In *Chipeto vs Nyirenda, Civil Cause No. 2135 of 2010*, the court awarded the claimant a sum of Mk 1,000,000. 00 as damages for loss of expectation of life. In the case of *Fayiness Nyalungwe v Prime Insurance Company Limited, Civil Cause No. 416 of 2013* the court awarded Mk 1,500,000.00 for loss of expectation of life.

In respect of the matter at hand and in consideration of the cases cited, I consider the sum of MK1,000,000.00 as a reasonable sum and award it for the loss of life expectancy.

LOSS OF DEPENDENCY

This court now turns to the claim for loss of dependency.

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 Mtelera v Sabot Hauliers 15 MLR 373 and Mallet v McMonagle (1970) A.C. 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.

In the present matter the deceased was 4 years old when the accident occurred.

In Senga vs Malawi Railways Ltd (1996) (2) MLR 796.

What has given me a great deal of uneasy is that the fact that the deceased was only a young boy, who as I have said, was 12 years old and still in primary school. It is somehow easy when we are talking about an adult who was working and assisting the parents financially and / or materially. Indeed it has been said somewhere that with regard to deceased infant children, there is, on the one hand, no clear evidence of the desire or ability of the child to assist the parents in later years, and on the other, parents have all expenses of bringing up the children ahead of them. I think that the issue is really whether the parent can be said to have a reasonable expectation of a pecuniary benefit from the continuance of life of the deceased child, regardless of whether the parent was actually receiving such benefit at the time the deceased's death. It is also a question of facts and evidence, like the present case, showing that the deceased was generally helpful to his parents and evidence that he was serious about his education and was bright, should proffer much guidance in dealing with this issue, bearing in mind that damages in such case are essentially speculative.

In the case of **Linda Tembo (suing as administratrix and on her own behalf as a mother of the deceased and on behalf of other dependants of Alinafe Kubwalo (deceased) vs Pilirani Kavalo and Prime Insurance Company Limited Personal Injury Cause No. 274 of 2013,** the plaintiff was claiming for damages for loss of dependency and loss of expectation of life on behalf of the deceased who died when she was 6 years old. The Court considering that the deceased was a school going child and the circumstances of the case awarded a sum of K1, 000,000.00 for loss of expectation of life and K800, 000.00 for loss of dependency. The awards were made on 2nd June 2014.

In Christopher Mkangala (on his own and as administrator of the Estate of Akuzike Nkangala (Deceased), Mbumba Nkangala vs Mayeso Luhanga, Malasha Bus Servicess and United General Insurance Company Limited Personal Injury Cause No. 745 of 2011 the deceased was two years old when she died in a road accident. The Court stated that the child was very young and her parents could not say that they were dependent on her to deserve a monetary award, The Court further stated that the child was not of age that she could do any gainful work. The Court declined to award damages for loss of dependency and awarded a nominal award of K100, 000.00 in lieu. The Court further awarded a sum of K800, 000.00 as damages for loss of expectation of life. The Court made the awards on 16th July 2014.

In the present matter, the deceased died at a tender age and one could not say that he was helping his parents financially or materially. I have perused the claimants witness statement and there is no evidence about the deceased education and how he was performing at school to prove that he had a bright future. There is no evidence in respect of the assistance that the deceased was rendering to the claimant at home. In the absence of the above the Court awards a sum of K700, 000.00 as damages for loss of dependency

FUNERAL EXPENSES AND OTHER SPECIAL DAMAGES

Under the head of special damages, these are awarded for monetary loss actually suffered and expenditure actually incurred. Special damages must be pleaded in order to give the defendant notice of it. Even if pleaded these must be proved strictly *Peredrello E. Compantia Ltd v United Paint Co. Ltd (1969) 3 ALL.E.R. 479*. See also *General Farming Ltd v Chombo (1996) MLR at 16*.

In the present case there is no evidence to that effect and it is in the discretion of the court. I, therefore, award the plaintiff MK 50,000.00 for funeral expenses.

I therefore award a total sum of K1, 750,000.00 damages for loss of expectation of life, loss of dependency and funeral expenses. Costs are for the claimant.

Made this  of January 2019.



T. SOKO
ASSISTANT REGISTRAR