

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 101OF 2015

BETWEEN:

GEORGINA TENETI (Suing as administratrix of the state of Alexander Teneti (deceased) ...CLAIMANT

AND

CHARLIE KUNTEPA.....1st DEFENDANT

PRIME INSURANCE COMPANY LTD.....2nd DEFENDANT

YUSUF JACKSON.....3RD DEFENDANT

CORAM: T. SOKO: ASSISTANT REGISTRAR

MR KUSIWA : COUNSEL FOR THE CLAIMANT

DEFENDANT: ABSENT

CHIMANG'ANGA : OFFICIAL INTERPRETER

ASSESSMENT ORDER

BACKGROUND

This is an order on assessment of damages following an order for summary judgment dated 16th June 2017. The claimant is claiming damages for loss of dependency, loss of expectation of life and costs of the action. The brief facts from the statement of claim aver that on 4th September 2014, the 3rd defendant was driving a motor vehicle IT number 4359 Toyota Premeo Salon insured by the 2nd defendant when upon arriving at

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 Lile 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 vicissitude 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.

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

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 vicissitude 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.

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 the light of Section 7, the claimant is entitled to bring the present action.

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 present matter the deceased died at the age of 36. The evidence indicates that he still had good health when he died and he was still working meaning he was not incapacitated. **In the case of Grace Chipeto vs Johnson Nyirenda and another Civil Cause No. 2135 of 2012** the court awarded the sum of K800,000.00 for loss of expectation of life where the deceased died at the age of 27. The award was made on 26th July 2012.

In the light of the foregoing and considering the devaluation of currency I award the sum of K1, 000,000.00 as damages for loss of expectation of life.

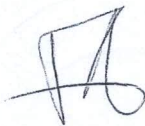
On loss of dependency the deceased died at the age of 36 as already alluded in this matter. He was working with ESCOM and the pay slip tendered before this Court indicates that the deceased was earning K68, 987.57 per month. The claimant stated that she depended on the deceased in her needs. The deceased also left

children whom he used to look after. Considering that life expectancy in Malawi is 55 years, the deceased had 19 more years to live. However uncertainties of life compels me to reduce the years to 14. Using the multiplier and multiplicand formula I award a sum of K7, 726,607 .00 as damages for loss of dependency.

I therefore award a total sum of K8, 726,607.00 damages for loss of expectation of life and loss of dependency.

Costs are for the claimant.

Pronounced in chambers on this *8th* day of January 2019.



T. SOKO

ASSISTANT REGISTRAR