



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 213 OF 2018

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Between

GIFT MZUMARA (Suing on his own behalf and on behalf of the beneficiaries of the estate of WASHINGTON MZUMARA- Deceased) CLAIMANT

-and-

PILIRANI MPHANDE..... 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED2ND DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Mr. Kusiwa and Ms. Lapozo, for the Claimant

Mr. Chikaonda, for the Defendants

Ms. M. Galafa, Clerk/ Official Interpreter

Banda

ASSESSMENT ORDER

Background

By the judgment of Honourable Justice John Chirwa dated 8th August, 2018, the defendants were found liable for the claimant’s claim for damages for loss of expectation of life and loss of dependency and costs of the action. The Honourable Judge directed that assessment of damages should be done by the Registrar. The two parties came before me on 7th December, 2018 for hearing of the assessment of damages. The claimant brought one witness and closed their case. The defendants did not parade any witnesses.

Evidence

Gift Mzumara, through a filed statement which he adopted in the hearing, stated that his 11 year old son Washington Mzumara was hit by a motor vehicle registration number LL 7949 as the

son was crossing a road within Rumphu district, such that the son died on the spot. The vehicle was driven by the 1st defendant and insured by the 2nd defendant.

It was the evidence of the claimant that before his death, the son was running errands at home like drawing water, sweeping and washing. He further said that Washington was an intelligent boy who lived a happy and healthy life such that his parents had hopes that he would finish school and help the family financially in future. He said his son provided hope and comfort to him and the mother such that the loss devastated them. Mr. Gift Mzumara tendered a death report authored by R.B. Kisyombe an Orthopaedic Officer at Rumphu District Hospital who stated in the report that Washington Mzumara died of severe head injuries at the age of 11. Mr. Gift Mzumara prayed that the court awards him damages.

In cross examination by counsel for the defendants, Mr. Gift Mzumara told the court that the child was at the time of his death a school going child. He said that the child was not earning any income, but was helping with household chores such as tending goats and sweeping the yard.

Issue

The only issue in this matter now is the quantum of damages that the defendants should pay as damages for loss of expectation of life and loss of dependency.

Law and Facts

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses she has suffered. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff [now called the Claimant], as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within

the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported).**

Loss of Expectation of Life

Awards for claims of loss of expectation of life takes into account the number of years a deceased person was expected to live without necessarily attaching value to the years but that the claimant enjoyed a predominantly happy life. Generally, courts consider the country's life expectancy when making such an award- **Samuel Chawanda v. Attorney General Civil Cause No. 3556 of 2002 High Court, Principal Registry (unreported).** The court also factors in life's ups and downs. It is a fact of life that misfortunes abound in the human realm that lessens a person's natural length of life- **Aaron Amosi and Another v. Prime Insurance Company Limited, Personal Injury Cause no. 133 of 2013, High Court, Principal Registry.**

I have looked at a plethora of cases on this head. The damages are ranging between K900,000.00 and K1, 800,000.00. For instance, in the case of **Masauko Ephraim (suing on his own behalf and on behalf of other dependents of the estate of Shadreck Banda, Deceased) v. Prime Insurance Company Limited, Personal Injury Cause Number 658 of 2012,** K900,000.00 was awarded as damages for loss of expectation of life. In the case of **Esther Kassim (suing on behalf of the estate of Losani Willy, deceased) v Stanley Dimusa and Prime Insurance Company Limited Personal Injuries Cause Number 56 of 2015;** an award of K1, 200,000.00 was made. In **Anne Chilanga (suing on behalf of the beneficiary of Friday Nyopola (deceased) v Duncan Nyalugwe and Prime Insurance Company Limited Personal Injury Cause Number 659 of 2011** an award of K1, 500,000.00 was made as damages under this head. In the case where a boy had his life wrongfully terminated at a tender age of 12, the court awarded K1, 800,000.00- **Lastone Chidule (suing on his own behalf and on behalf of other dependants of Mphatso Chidule) v. ESCOM Limited Personal Injury Cause No. 947of 2015.** This award was made in May, 2018. In that regard, I award the claimant **K 1, 800,000.00** in this matter, as damages for loss of life expectancy.

Loss of Dependency

Courts use a multiplicand and multiplier formula to come up with an award for loss of dependency. The multiplicand is the figure representing the deceased's monthly earnings which is also multiplied by the figure 12, being the number of months in a year. The multiplier is an estimated number of years the deceased would have lived if it were not for the wrongful death. There are different approaches to finding the multiplicand where the deceased is a minor who due to age was not in any formal employment in which the minor was earning an income. In the case of **Samuel Chawanda v. Attorney General Civil Cause No. 3556 of 2002 High Court, Principal Registry (unreported)** the Honourable Registrar Tembo, as he then was,

used a quarter of the domestic servant's wage, normally equated to the minimum wage applicable as the multiplicand, using the precedent set in the case of **Libana v. Attorney General Civil Cause No. 296 of 1998, High Court, Principal Registry (unreported)**.

Justice Katsala in the case of **Mr. Phillip Banda v. Alfred Mhone, Civil Cause Number 507 of 2002, High Court Principal Registry (unreported)** used the material time's half of the annual industrial wage as the multiplicand. The approach he adopted from the Registrar in the case of **Vincent Mwakamo v. Flexer Ngoma Civil Cause Number 1519 of 1997 (unreported)**.

In most cases a third of the income is taken away as representing the sum of money that the deceased would have used for themselves as opposed to the rest as representing what would have been spent on the dependants. It would appear that for a deceased who was a minor that should not be the case as the case of **Samuel Chawanda** and also that of **Phillip Banda**, which is binding on me, will show; where the only taxation on the annual income was the dividing it up in a quarter and a half respectively. It would be fair in my view, not to make that deduction, for purposes of a kind of an off-set as will be seen in the succeeding paragraph.

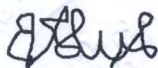
Loss of dependency suffered is not only in the time immediately after the death but futuristic as well, to the time it is expected that the deceased dying out of a tort would have by natural cause died, minus of course time taken out as allowance for life's misfortunes. Over the period of years, the claimant's deceased benefactor would have earned the income had it not been for the wrongful death, the industrial wage would be changing too due to loss of value of the currency and other labour and economic related factors. In fact, an individual's worth in the industry goes up with experience and qualification. The deceased was in school. It would not be an unusual expectation that he would have attained qualifications, and overtime experience, that would have enabled him to earn above the minimum wage.

The current minimum wage that took effect on 1st July, 2017, as revised by the Minister of Labour under section 54 of the Employment Act is K962.00 per day. Normally domestic workers work 6 days a week and there are four weeks a month. The minimum monthly wage is therefore K25, 012.00. Half of that is K12, 506.00, and this is our multiplicand. Life expectancy in Malawi at the time of Washington Mzumara's death, in the year 2017, according to CountryEconomy.com (<https://countryeconomy.com>) was 63.22. Washington Mzumara died at the tender age of 11. He was expected to live for 52 more years. I will subtract 4 years to cater for life's events, but also the fact that the sum will be paid as a lump which can be invested and earn interest. The multiplier is therefore 48. As such the damages awardable for loss of dependency is K12,506.00 multiplied by 12 (the annual income) multiplied by 48, which is **K 7, 203,456.00**.

Conclusion

The claimant is awarded a total sum of **K9, 003,456.00** as damages for loss of life expectancy and loss of dependency. The claimant is also awarded costs of the assessment. The costs shall be assessed by the Registrar if the parties cannot agree the amount.

Made this 28th day of February, 2019.



Austin Jesse Banda

ASSISTANT REGISTRAR