



**THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 336 OF 2018**

BETWEEN

Felesiyano Mtsiliza (suing on his own behalf and on behalf of the beneficiaries of the Estate of Kalonga Delius Samson (Deceased)).....Claimant

and

James Chimowa.....1st Defendant

PRIME INSURANCE COMPANY.....2nd Defendant

CORAM:	<i>Madalitso Khoswe Chimwaza,</i>	<i>Assistant Registrar</i>
	<i>N. Longwe</i>	<i>Counsel for the Claimant</i>
	<i>L. Kaponda</i>	<i>Counsel for defendant</i>
	<i>C. Zude</i>	<i>Court Clerk</i>

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION

This is the court's assessment of damages following a consent order on liability for negligence where the defendant admitted 65% liability and contributory negligence of 35% to the claimant. The claimants are claiming damages for loss of dependency and loss of expectation for life and special damages. The action herein was commenced by the uncle to the deceased who obtained letters of administration to proceed as such.

Brief facts:

On or about the 6th of January, 2018 the 1st defendant was driving a motor vehicle, Toyota Hiace Minibus registration number PE 2058 from the direction of Lilongwe towards Dedza M1 road where upon joining the road from Nayeke bus stage going towards Dedza, the 1st defendant lost control of the vehicle and the said vehicle hit a pedestrian by the name of Kalonga Delius Samson who was standing on the left side of the road. As a result of the accident the claimant sustained severe head and neck injuries and later died at Nthenje Health centre.

The claimant stated that as a result of the accident and death he incurred expenses to obtain a death certificate and police report amounting to K9,000,00. He incurred expenses for the funeral amounting

to K150, 000.00. According to the death certificate tendered as exhibit No. FM2 the deceased died at the age of 18 as he was born on 5th December, 2000.

Counsel submitted that the claimant should be awarded K5,760,000 for loss of dependency and K4,000,000 for loss of life and special damages for funeral expenses and police and death certificate at K159,000.00.

Issue for determination

How much should be awarded as damages for the loss of life and dependency.

General Principles on Damages for Loss of Expectation of Life

The principles for the award of damages for the loss of expectation of life were enunciated in **Benham vs Gambling** [1941] 1 ALL ER 7, that when assessing damages generally, the court is engaged in an exercise of trying to put a value to the loss or damage suffered by the plaintiff. In a claim for expectation of life, the first question therefore ought to be what is it that the plaintiff lost? It is that which the plaintiff has lost that must be valued. It has been held that it is the prospect of a predominantly happy life that has to be valued, hence the damages are in respect of loss of a measure of prospective happiness, taking into account the ups and downs of life depending on circumstances of each individual life. It is not the prospect of the length of days that is to be valued. See **Samuel Chawanda vs Attorney General**, Civil Cause No. 3556 of 2002. The Court generally takes into account the country's life expectancy, health of the deceased as well as the age of the deceased.

Damages for Loss of Dependency

The right of action by the personal representatives for loss of dependency for the benefit of dependants is founded on **Section 3 and 4 of the (Statute Law Miscellaneous Provision) Act**. It can be brought by either the personal representatives of the deceased for the benefit of the dependants or it may be brought by the dependants themselves.

It is trite that in calculating loss of dependency courts use what is termed the multiplicand and multiplier formula,(See **Dimingu & others v. Attorney General Personal Injury Cause No. 749 of 2012 (unrep)**). The multiplicand is a figure representing the deceased's monthly earnings whereas the multiplier is an estimated number of more years the deceased would have lived if it were not for the wrongful death.

In ascertaining the multiplicand, the court looks at the deceased's earnings at the time of death. Then a reduction of one third of the product is made to take into account sums the deceased would have expended on purely personal pursuits and expenses.

In this case the deceased was a young boy of 18 years, and we are not told how he was earning his living if any and he never kept records of his earnings. In such cases courts do use the minimum wage as provided in the Employment Act at the time and as revised time and again. The minimum wage applicable at the time of his death is K25,012 per month as per the Employment Act (minimum Wages, (Amendment) Act, 2017 which came into operation on 1st July 2020.

On the other hand damages for loss of dependency for children are purely speculative and very low as such nominal damages are awarded. In the case of **Alice Zangwe, Patrick Zangwe vs Attorney General, Grace Memba, Hellen Chavula Siyeni Civil cause No. 195 of 2013**, the Assistant Registrar, remarked that the method of using multiplier and multiplicand is useful in cases where the deceased is an adult whose income can easily be

ascertained or an employable individual whose income can be presumed using the minimum wage applicable from time to time. In that case where the child was still born a nominal award of K250,000 was made.

In the present case the deceased was of employable age at 18 and the minimum wage will apply.

The court will assess these damages based on previous comparable awards.

In **John Chirwa vs Alfred Majamanda SMEDI and Prime Insurance Co.** Civil cause No. 1 of 2016, the court awarded the sum of K1,500,000 for loss of expectation of life.

In the case of **Margaret Potani vs Edred Phiri and Prime Insurance Co. Ltd** Civil cause no. 869 of 2015 the court awarded a sum of K1,200,000 for loss of expectation of life.

In the case of **Hannah Master (suing on behalf of the Estate of Master Henry, deceased and on behalf of the dependants) vs Medson Kabingu and Prime Insurance Co. Ltd**, Civil Cause No. 7 of 2017 [2018] MWHC 785, the court made an award of K2,000,000.00 as damages for loss of expectation of life in respect of the deceased who died at the age of 33.

Loss of expectation of life:

In the instant case the court is of the view that a sum of K 1,500,000.00 would be reasonable and just. It is so awarded.

Loss of dependency:

The Court will adopt the life expectancy of 60 years when calculating this head of claim. The same was used in the case of **Agnes Bezai (suing as the administrator of the Estate of Bezayi Dzonzi on behalf of the estate and dependants) vs Enock James**, Civil cause no. 867 of 2018 in the judgement delivered on 20th April 2020. To arrive at the level of dependency the multiplicand is multiplied by the multiplier which in this case will be 9 and then the figure 12 representing the number of months in a year. Whatever product will be reduced by a percentage representing the portion the deceased would have expended on purely personal needs.

In the present case the multiplier will be 42 since the deceased was 18 years with the multiplicand of K25,012 as minimum wage.

$K25,012.00 \times 12 \times 42 \text{ years} = K12,606.048$ less two thirds representing the amount that the deceased would have spent on purely personal things, **K8,404.032**.

Special damages

The court has noted that the plaintiff was claiming special damages in the sum of K150,000 as expenditure for funeral expenses but there is no substantive evidence to support the claim. Claimant further claims K9,000.00 for obtaining death and police report but there are no attachments as evidence. Therefore the court awards a reasonable sum of **K100,000.00** for funeral expenses and **K9000** as costs for obtaining death report and police report.

The claimant is awarded as follows:

loss of expectation of life-K1,500,000.00

Loss of dependency -K8,404,032.00

Special damages _ K 109,000.00

ORDER

The defendant is ordered to pay a total sum of K6,546,620.00. representing 35% contributory negligence of the claimant's deceased.

The claimant is also awarded K500,000.00 party and party costs of these proceedings summarily on standard basis pursuant to **Order 31 rule 4 of the CPR.**

Either party aggrieved by the order has the right to appeal.

Made in Chamber this 28th day of October, 2021.



Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR