



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
Civil Cause Number 944 of 2013**

BETWEEN:

**MR KAMULAKA BULEYA (father suing on his own behalf and on behalf of the beneficiaries and dependents of the estate of PETER BULEYA (deceased)).....CLAIMANT
AND
MR ZAKEYO BANDA.....1ST DEFENDANT
PRIME INSURANCE COMPANY LIMITED.....2ND DEFENDANT**

CORAM:	C MANDALA:	ASSISTANT REGISTRAR
	Mapemba-Chikopa:	Counsel for the Claimant of Winlaw and Ndau
	Sikwese:	Counsel for Defendant of Sikwese and Company
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Judgment entered in favour of the Claimant on 27th November 2019. The Claimant was awarded damages for loss of expectation of life, loss of dependency, special damages, and costs of the action.

The claim arose from an incident that occurred on 25th September 2012 when the deceased was crossing the road at Nkhwazi Zebra crossing along the Lilongwe Mchinji Road. The deceased was hit by a vehicle driven by the 1st Defendant and insured by the 2nd Defendant and he died while receiving treatment at Mchinji District Hospital.

EVIDENCE

The Claimant adopted a witness statement as his evidence in chief. It states

I KAMULEKA BULEYA of c/o Box 24 Nkhwazi, Mchinji make oath and state as follows:

1. **THAT** I am the plaintiff in the action and a father of Peter Buleya (deceased).
2. **THAT** I am suing on my own behalf and on behalf of all the beneficiaries and dependants of the estate of Peter Buleya (deceased).
3. **THAT** Peter Buleya was an intelligent young man aged 17 years with sound mind and healthy.
4. **THAT** on or about the 15th day of July 2012 late Peter Buleya was crossing the road at Nkhwazi Zebra crossing along Mchinji/Lilongwe road while pushing a bicycle when he was bit by a motor vehicle registration number LA 3107 Toyota Hiace.
5. **THAT** the driver of the said motor vehicle, a Mr Zakeyo Banda, who was driving at an excessive speed, failed to stop at the zebra crossing and hit the deceased from which he suffered injuries.
6. **THAT** the deceased was referred to Nkhwazi Health Centre for medical attention where he passed away.

7. **THAT** the deceased used to help me and his mother Mercy Kamulaka in maintaining our small shop business located at Nkhwazi Trading Centre.
8. **THAT** I and other dependants of the deceased have suffered loss and damage and we therefore seek compensation from the defendants through Messrs Winlaw and Ndau..
9. I verily believe in the statement made herein to the best of my knowledge and belief.

In viva voce, the Claimant told the court that the deceased was 17 years old when he died and was in Form 2 at Secondary School. The Claimant had hoped that the deceased would take care of the family after finishing school. The Claimant confirmed these statements in cross examination and added that the deceased was living with his parents at the time of his death. He was in Form 2 at Mchinji Secondary School. The Claimant was asked whether he had obtained letters of administration to allow him to commence this action but his Counsel undertook to furnish the court with the letters of administration after hearing.

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant's loss and the devaluation of the Kwacha would attract awards totalling K7,035,103.96 for loss of expectation of life, loss of dependency, and special damages.

Counsel for the Claimant cited comparable awards where the court awarded the sums of K1,500,000.00, K1,500,000.00, and K2,000,000.00, as damages for loss of expectation of life. The awards were made in 2018, 2017, and 2019. See; *Kwerani v Masamba & Prime Insurance Company Limited* Personal Injury Cause Number 99 of 2011; and *Nyalugwe v Prime Insurance Company Limited* Personal Injury Cause Number 416 of 2013 and *Kapusya v Malikebo* Civil Cause Number 154 of 2019.

On loss of dependency, Counsel for the Claimant based their computations on the multiplier and multiplicand approach. Counsel for the Claimant submits that the multiplicand to be used for the deceased should be K40,000.00 which is the minimum wage. Counsel made the following computations:

$$\begin{aligned} &K40,000 \times 12 \times 41 \times 2/3 \\ &=K13,120000.00 \end{aligned}$$

ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant's pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.¹ Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd*³ by stating: 'money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.'

¹ See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

² *British Commission v Gourley* (1956) AC 185.

³ *West v Shepherd* (1964) AC 326 at 346.

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*⁴, the Supreme Court states: “It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.” In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁵ the Court states: “Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.” In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.’

COMPENSATION

Loss of Expectation of Life

Damages under this head are claimable by a Claimant where injuries suffered by him have reduced his expectation of life - *Flint v Lovell* [1935] 1 KB 354. The claim for damages under this head also survives the demise of the injured plaintiff and is thus available to the personal representative of his estate – *Nyirongo v United Transport (Mal) Ltd* [1990] 13 MLR 344. In assessing damages under this head, the thing to be valued is not the prospect of length of days but of a predominantly happy life – *Bentham v Gambling* [1941] AC 157. No regard must be had to the financial losses or gains during the period of which the victim has been deprived, as these damages are in respect of loss of life, and not of future pecuniary loss - *Bentham v Gambling* [1941] AC 157.

In determining what damages to award the Claimant for loss of expectation of life, current awards are considered to determine an appropriate amount of compensation. Counsel for the Claimant cited K1,500,000.00, K1,500,000.00, and K2,000,000.00, as damages for loss of expectation of life. The awards were made in 2018, 2017, and 2019. See citations above. Counsel submits that a total sum of K2,000,000.00 is however appropriate for the Claimant.

Considering the amount of time that has passed since the accident occurred (2012) and the time that has elapsed since the awards cited by Counsel were made, this court believes an adequate award for the Claimant would be **K3,000,000.000 as damages for loss of expectation of life.**

Loss of Dependency

For damages under this head, the basic rule is that they are to be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of life – *Franklin v SE Ry* (1858) 3 H & N 211 at page 214. There is no need for the dependant to show that the deceased was under a legal liability to support him or her - *Franklin v SE Ry* (1858) 3 H & N 211. There is also no need to show that the dependant was receiving pecuniary benefit at the time of the death, a purely prospective loss being sufficient. Thus, a dependant parent might not have reached an age of requiring assistance - *Franklin v SE Ry* (1858) 3 H

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

& N 211; alternatively, a deceased child might not have reached an age when he or she could afford to render assistance – *Taff Vale Railway v Jenkins* [1913] AC 1.

In calculating damages for loss of dependency, the courts use the multiplicand and the multiplier method. The multiplicand is a figure representing the annual value of the dependency, and the multiplier is an approximated number of years over which such dependency is deemed to continue. The assessment is divided into two stages: firstly, the period between the date of death and the date of the trial and, secondly, the period following the trial. In arriving at the proper multiplicand, the calculations are made on the assumption that the deceased would have spent one-third of his income for personal expenses. The product of the multiplicand and the multiplier (starting figure) is scaled up or down, after considering the relevant considerations. The method adopted by the courts in determining the starting figure is to keep the multiplicand intact and either decrease or increase the multiplier. *Mbila et al v Attorney General et al* [1993] 16(1) MLR 283, *Banda and Chibuku Products Ltd v Chunga* [1987-89] 12 MLR 283 and *Thindwa v Attorney General et al* [1995] 1 MLR 336.

There are basically two considerations for which the courts decrease the multiplier. The first consideration is that a lump sum is being given and that it is, therefore, likely to be invested. The second consideration is that contingencies might have arisen to cut off the benefit prematurely. Suffice to say, for now, the most important of the contingencies are to do with death and marriage. Conversely the multiplier may be increased over the years. It should be noted that where the deceased's income was ascertainable, the award for loss of dependency would be equal to the annuity lost for the period of the deceased person's expected employment had he been alive. However, when there is no evidence as to how much the deceased was earning, the court awards something equivalent to what a domestic worker earns – *Mbila et al v Attorney General et al* [1993] 16(1) MLR 283, *Thindwa v Attorney General et al* [1995] 1 MLR 336 and *Kenson Shapu v NICO General Insurance Company Limited* Civil Cause Number 222 of 2007.

The deceased herein was aged 17 years. He was a student who left behind his parents, who he used to help with household chores and tending a shop located at Nkhwazi Trading Centre. The deceased died on 25th September 2012. Since the deceased had no tangible income as a student, the court will use the minimum wage to determine the deceased person's income. The Employment (Minimum Wages) (Amendment) Order, 2012 that was in effect at the time of the deceased person's death pegged the minimum wage at K317.00 per day, K9510.00 per month, and K114,120.00 per annum. The court adopts the sum of K9510.00 as the multiplicand.

In terms of the multiplier, existing case authorities state that life expectancy in this country is in the region of 45-50 years – *Emma Sitenala Piyano v Geoffrey Chipungu and Prime Insurance Company Limited* Civil Cause No 1254 of 2001. Statistics released in 2011 from UNDP pegged life expectancy in Malawi at 52 years. The more recent case of *Lucy Chitsotso Chatayika v Emmanuel Kaludzu and United General Insurance Co. Limited* Civil Cause Number 1146 of 2016 (unreported) pegged life expectancy at 61.2 years.

The deceased was a student at the time of his death and was aged 17 years. He was not employed but did help his parents with household chores. A simple subtraction of the deceased's age from the life expectancy (see *Fatima Jackson v Evans Elias and Prime Insurance Co Ltd* Civil Cause Number 618 of 2013 (unreported)) would give us a multiplier of 44.2. Taking into consideration that the deceased was a student in Form 2, he still had some years of schooling to go before he would have started working. At the least, it is likely that he would have gone up to Form 4. With these considerations in mind, this court will therefore adopt a multiplier of 40.

Herewith the computations:

$$\begin{aligned} &= (\text{K}9510 \text{ (per month)} \times 12) \times (40 \text{ (multiplier)} - 1/3) \\ &= \text{K}114,120.00 \text{ (annual salary)} \times (32.2 - 13.3) \\ &= \text{K}114,120.00 \times 18.9 \\ &= \underline{\underline{\text{K}2,156,868.00}} \end{aligned}$$

Special Damages

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - *Stros Bucks Aktie Bolag v Hutchinson* (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – *McGregor on Damages* p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - *Govati v Manica Freight Services (Mal) Limited* [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516.

The Claimant herein was awarded special damages that were quantified as K3,000.00 being cost of the police report and sum of MK3,000.00 for the cost of obtaining the death report. As stated above, special damages ought to be specifically claimed and proven. The Claimant herein failed to do either. For these reasons, no award will be made under this head.

DISPOSAL

Summary

The Claimant is therefore awarded **K3, 000,000.00** for loss of expectation of life, **K2,156,868.00** for loss of dependency, K0 for special damages, and costs of the action (to be assessed by the Court).

Total award is K5,156,868.00 (five million one hundred and fifty six thousand, eight hundred and sixty-eight kwacha).

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames. Leave to appeal is hereby granted.

Ordered in Chambers on the 9th day of April 2021 at the High Court, Civil Division, Lilongwe.



C Mandala

ASSISTANT REGISTRAR