



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

BETWEEN:

ANASOKANA KAMBANJE and SALOME DICKMAN (suing as administrators on behalf of the beneficiaries of the estate of FANUEL KACHIKHO DICKMAN (deceased)).....CLAIMANT AND

MR GONGOWA PHIRI.....1ST DEFENDANT

LIBERTY GENERAL INSURANCE COMPANY LIMITED.....2ND DEFENDANT

CORAM:	C MANDALA:	ASSISTANT REGISTRAR
	SR Mapemba:	Counsel for the Claimant of M&M Global Law Consultants
	Nthewa:	Counsel for Defendant of Liberty General Insurance Co Ltd
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Default Judgment entered in favour of the Claimant on 2nd July 2020. The Claimant was awarded damages for loss of expectation of life, loss of dependency, K208,000.00 as total costs on special damages, and costs of the action.

The claim arose from an incident that occurred on 10th July 2019 when the deceased was walking around the Nathenje MRA Roadblock area. The 1st Defendant lost control of the motor vehicle he was driving and hit the deceased as he was walking along the right verge. The deceased died on the spot.

EVIDENCE

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

1. *I am the above-named Salome Dickman, the claimant in this matter and daughter to the deceased.*
2. *On or about 10th July, 2019 while the policy was in force, the 1st Defendant was driving a motor vehicle registration number MJ 609 Nissan Vannet Minibus from the direction of Nayere heading Nathenje along Lilongwe/ Dedza M1 road.*
3. *Upon arrival at a point near Nathenje roadblock, he lost control of the said motor vehicle, left the tarmac road and veered to the extreme mud edge of the road where the deceased was walking heading to the opposite direction and hit him.*
4. *The accident was caused by the negligence of the 1st Defendant as he failed to manage and control his vehicle to the point that he left the tarmac road, followed the deceased while he was walking on the extreme mud edge of the road.*
5. *As a result of the accident the deceased sustained severe head injuries and died on the spot. Attached herein are police and medical reports marked “SD2” and “SD3”.*

6. That the deceased monthly income was MK45,000.000 derived from selling fruits, vegetables and goats and being a guard at Kulima Gold at Nathenje.
7. The deceased was survived by 5 children and a wife as his dependants.
8. I confirm that the contents of this statement are true to the best of my information, knowledge, and belief and know that I will be liable to prosecution if I state in it anything I do not believe to be true.

In viva voce, the Claimant told the court that the deceased person's income was K45,000 per month and she had evidence to prove this. The Claimant further stated that the deceased was a farmer and would sell produce. He was also employed as a guard where he received a salary.

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 K6,552,000.00 for loss of expectation of life, loss of dependency, and special damages.

Counsel for the Claimant cited comparable awards where various courts awarded the sum of K2,000,000.00 as damages for loss of expectation of life. The awards were made in 2018, 2019, and 2020. See; *Lestas Phiri v Moses Owen Mphepo & Britam Insurance Company Limited* Civil Cause Number 33 of 2018; *Tamara Sibale (suing on her own behalf and on behalf of the dependants of Patrick Sibale, deceased) and Bongani Sibale v John Lameck and others* Personal Injury Cause Number 611 of 2017, *Mary Kalupsya (suing on her own behalf and on behalf of the dependants of the estate of Annie Kalupsy, deceased) v Gerald Malikebu and another* [2019] MWHC 126, and *Aubrey Gama v Daniel Banda, Mchinji District Assembly and Prime Insurance Company Limited* Civil Cause Number 448 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 K45,000.00 which was his income at the time of his death. Counsel made the following computations:

$$\begin{aligned}
 &K45,000 \times 12 \times 16 \times 1/3 \\
 &=MK2,880,000 \times MK 1,152,000 \\
 &= \underline{\underline{MK4,032,000.00}}
 \end{aligned}$$

SUBMISSIONS BY THE DEFENDANT

The Defendant filed submissions in response. Counsel argues that the Claimant ought to be awarded K800,000 as damages for loss of dependency. Counsel cited comparable awards to support his contention. These were:

- *Yasin v MM Hamdani t/a Kaliputa Transport* Personal Injury Cause Number 196 of 2014 (unrep) – where the Claimant was awarded K1,000,000.00 for loss of expectation of life on 12th November 2014.
- *Phiri v Prime Insurance Company Limited* Civil Cause Number 198 of 2013 (unrep) where the Claimant was awarded K1,000,000.00 for loss of expectation of life on 17th September 2014.

Counsel further submitted that the Claimant was aged 79 years and was earning K45,000.00 per month. Counsel implored the court to adopt a multiplier of 5.8 since the deceased died at the age of 79 and that the multiplicand should be K45,000.00. Counsel submitted the following computations:

$$\begin{aligned}
 &K45,000 \times 12 \times 5.8 \times 1/3 \\
 &= \underline{\underline{K1,044,000.00}}
 \end{aligned}$$

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.*’

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 awards of K2,000,000.00, as damages for loss of expectation of life made in 2018, 2019, and 2020. See citations above. Counsel submits that a total sum of K2,000,000 is however appropriate for the Claimant. Counsel for the Defendant counter argued that the Claimant be awarded K800,000.00 as compensation for loss of amenities of

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.

⁴ [1996] MLR 486.

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

life based on awards of K1,000,000.00 made by various courts in 2014. See citations above. Counsel for the Defendant cited relatively old awards which must be adjusted upwards due to the passage of time and inflation.

Considering the foregoing discussion, 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 & 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.

Both the Claimants and Defendants have not disputed the fact that the deceased had a monthly income of K45,000.00. This court will therefore adopt the sum of K45,000.00 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.

Nonetheless, the Claimant submitted that the deceased died at the age of 59 while his death report shows that he died at the age of 79. The deceased herein was aged 79 years and had exceeded Malawi's life expectancy by all measures. The Claimant also mentioned in viva voce, that the deceased was born in 1940, which means he

died at the age of 79. Based on the death report and the Claimant's oral evidence, this court finds that the deceased was 79 years old at the time of his death. This court will therefore adopt 5.8 as a multiplier.

Herewith the computations:

$$\begin{aligned} &= (\text{K}45,000 \text{ (per month)} \times 12) \times (5.8 \text{ (multiplier)} - 1/3) \\ &= \text{K}540,000.00 \text{ (annual salary)} \times (5.8 - 1.9) \\ &= \text{K}540,000.00 \times 3.9 \\ &= \underline{\underline{\text{K}2,106,000.00}} \end{aligned}$$

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 K20,000.00 being cost of the police and death reports. As stated above, special damages ought to be specifically claimed and proven. The Claimant herein failed to provide any evidence of the expenses incurred. 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, **K2,106,000.00** for loss of dependency, K0 for special damages, and costs of the action (to be assessed by the Court). Total award is **K5,106,000.00 (five million one hundred and six thousand)**.

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