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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 910 OF 2014

BETWEEN

GLORIA SHAIBU (Suing on behalf of the Estate of Matilda Shaibu, Deceased) PLAINTIFF

AND

MACDONALD MASOKWE 1st DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM :

MATAPA KACHECHE Deputy Registrar
Madula for the Plaintiff
Ndhlovu for the Defendant
Mtegha (Mrs) Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

1. A consent judgment was entered on 16th November, 2017 finding the defendants liable in negligence following an accident which led to the death of Matilda Shaibu, a girl aged 11 years.

2. Following the judgment, the matter has been set down several times for assessment of damages but the assessment never took place until the 19th October, 2021 when I heard the parties on assessment.

3. The undisputed facts are that the plaintiff is the mother of the deceased child. She used to live with her at the time of death.

4. The death occurred as a result of the first defendant hitting Matilda, who was a pedestrian on the Zomba – Blantyre road.

5. On the hearing of evidence for assessment the plaintiff was the only witness. She adopted the witness statement which has the above stated facts. She also said she sues on her own behalf and on behalf of other beneficiaries.

6. It is acknowledged that it is not possible to precisely compute damages for loss of dependency and loss of expectation of life. There are thus no tables or some precise arithmetic formulae for coming up with these awards. To come up with the awards therefore we use comparable conventional awards. See the case of *Kalinda –vs- Attorney General* **[1992] 15 MLR 170 at p 172.**

7. To ensure that the awards do not unnecessarily fluctuate from case to case we look at the most recent awards from courts of similar jurisdiction to get guidance on the conventions. It is, in my view, preferable that the award for loss of expectation be fixed to avoid arbitrariness in the awards from different courts. But may be formal fixing may make the process so rigid as not to take into account economic realities of the country.

8. The claimant proposed K4,000,000.00 as damages for loss of expectation of life. Counsel cited two cases where the award was K2,000,000.00. He has not justified why in this case the award mut go up to K4,000,000.00.

9. Recently in the case of *Maryam Symon v Mr Daile Kumwenda and others* **(2016) PI no. 440** an award of K2,000,000.00 was made for loss of expectation of life. A similar award was also made in the case of *Sellina Golozera v Electricity Supply Corporation of Malawi* (2019) **PI no. 685**. The awards were made on 13th August and 16th August 2021 respectively.

10. I have no reason to depart form the awards and I award K2,000,000.00 as damages for loss of expectation of life.

11. The other head of damages is loss of dependency. Loss of dependency is awardable on the basis that the deceased left behind individuals who depended on him or her while s/he was alive. The wrongful death leads to an early termination of the dependency of the said individuals on the deceased.

12. Loss of dependency is a pecuniary one and the Court ordinarily use the multiplier multiplicand method of assessing. However, the method would be different in the case of a child of nonworking age.

13. Counsel has proposed that we must use the minimum wage as the multiplicand and use the life expectancy to determine the multiplier. But it must be borne in mind that this formula is based on the assumption that the deceased was earning a living- i.e. was employed (formally or otherwise) or had some kind of business. This cannot be the correct approach considering the fact that the child was not of working age and we cannot logically monetize her services to the family.

14. Justice Tambala in the case of *Mwase v Lilongwe City Council* **[1991]14 MLR 327**, put the basis for compensating the parents of a child as a question of money subject to the "element of reasonable future probabilities". Further the deceased was obviously helpful in the home. From this case it is to be deduced that the only way of compensating the parent is to award a reasonable amount of damages.

15. In the circumstances I award K2,000,000.00 for loss of dependency.

16. In total the award comes to K4,000,000.00.

17. I also award costs of the proceedings.

Delivered this 24th day of June 2022

Chimbizgani Matapa Kacheche
DEPUTY REGISTRAR