IN THE HIGH COURT OF MALAWI PRINCIPAL REGISTRY CIVIL CAUSE NO. 2192 OF 1994

MAXWEDL J KACHEKA (MALE).....1st Plaintiff -and-MARGARET KACHEKA (FEMALE).....2nd Plaintiff - and -B JASTERN (MALE) Defendant

CORAM: R R Mzikamanda, Deputy Registrar Mr Chirwa for the plaintiffs

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RULING

The two plaintiffs are father and mother to two deceased young girls aged 5 years and 3 years respectively at the time of their death. The elder girl was school going and was in standard 2. The two girls were hit by a vehicle driven by the defendant and as a result they died. The two plaintiffs now claim for loss of dependency.

On the question of dependency it seem that the claim is both for loss of dependency in relation to what contribution the little girls made to the household and in relation to prospect of future contribution. On the former the plaintiff's tesified that the elder girl would draw water prepare porridge and sweep the home. The younger could not cook but could sweep. For the future the elder girl had shown signs of being intellingent and having a bright future. She would probably have got a job which would have provided the parents with financial assistance.

This claim is made under Sections 3 and 7 of the Statute Law (miscellaneous) Act Cap 5:04 of the Laws of Malawi. This is a novel case because it is difficult to say whether indeed there was loss of dependency here on the part of the parents as these were very young girls who died. They did not provide any financial contribution in order to maintain the home. They were being tought by their parents on how to cook and look after a home. Whether what they did during the time of learning the chores was a contribution which would be the basis of dependency of the parents has exercised my mind. I am unable to find a case authority on the point. The cases cited to me as well as the paragraph in Winfield and Jolowicz on tort do not seem to address the particular situation I have here. I can not ignore the fact that with the prospects of the two' infants who lost their lives growing up into mature and educated persons they would have provided the two plaintiffs with some financial help. There were real prospects of dependency in future which were lost when the infants lost their lives. The first plaintiff described the infants as his gifts from God and as such were a source of confort an satisfaction to the two plaintiffs. There are no figures to go by. I would award a lump sum of K12,000 to the plaintiffs plus costs of these proceedings.

MADE in Chambers this 7th day of April, 1995 at Blantyre.

kamanda RF DEPUTY REGISTRAR

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