IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1142 OF 1994

BETWEEN:

EFENESI KAMBALAME (FEMALE) ..... Plaintiff

AND

PHALE BUILDING CONTRACTORS .....Defendant

CORAM:

W.W. Qoto, Deputy Registrar

R. Mhoni of counsel for the plaintiff

ORDER

The matter comes before me for an order of assessment of damages in respect of the death of the deceased who died in a road accident which occured on 18th December, 1991. The plaintiff also claims costs of the action.

There being no notice of the intention to defend having been given by the defendant, plaintiff entered default judgement against him on 12th October, 1994. That was an interlocutory judgement and damages had to be assessed.

The hearing of the notice of assessment was on 22nd November, 1995. That hearing proceeded in the absence of the defendant who, despite being duly served with the notice of the hearing of assessment of damages, did not appear. No reasons were given for his absence.

The deceased was the husband of the plaintiff and they had four children. The first one is a boy Edison Kambalame born in 1981. The second child is a girl born on 30th May 1983. The third child is a boy born in October, 1986 and finally, the last child is Gift who was born on 11th May 1991. The deceased had a daughter born of another woman before he married the plaintiff. Her name is Jane and she was born in 1979. These people used to stay with the deceased until his death which was caused by the wrongful act of the defendants.

Until his death, the deceased was a carpenter in the employ of the defendant. He was based in Mangochi. The evidence of the plaintiff was that at the time of his death, the deceased was aged 30 years. His salary was and still is not known but in every two months, he used to send to her K160 for her maintenance and that of all the five children.

The deceased left his father, his brother, his sister and his uncle alive.

The action was brought under the provisions of the statute Law (Miscellaneous Provisions) Act (Cap 5:01) of the Laws of Malawi. It has been brought by the plaintiff for the benefit of the family of the deceased.

The purpose of part I of the said Act is to put the defendants of the deceased, who had been the breadwinner of the family, in the same position financially as if he had lived his natural span of life. In times of steady money values, wage levels and interest rates, this could be achieved by awarding the dependants of a working man the capital sum required to purchase an annuity of an amount equal to the value of the benefits with which he had provided them while he lived, and for such period as it could reasonably be estimated they would have continued to enjoy them but for his premature death. Although this does not represent the way in which it is calculated such a capital sum may be expressed as a product of multiplying an annual sum which represents the dependancy by a number of years purchase Cookson v Knowles (1978) 2 ALL E.R 604. This later figure is less than the number of years which represents the period for which it is estimated that the dependants would have continued to enjoy the benefits of the dependancy.

The underlying principle is of course that damages are compensatory. They are not designed to put the plaintiff or the estate in a better financial position than that in which she or it would otherwise have been if the accident had not occured. In making the assessment account has to be taken of a number of impredictable contingencies. Such an assessment cannot, in the nature of things, be an exact science. Further the presence of so many imponderable factors necessarily renders the process to be both complex and imprecise, one which is incapable of producing better than an approximate result. Be that as it may, I must award compensatory damages although I am precluded, from awarding damages for sentimental or other reasons, in the robust language of Lord Wright in Davis v Powell Durrfryn Assoc. Collieries Ltd (1947) A.C. 616 at 617.

There is no question of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds shillings and pence subject to the element of reasonable future probabilities. In a case like this one, the practice of the courts is to assess damages in two stages. The first stage is the pre-trial stage and there the court is concerned with loss of dependancy between the date of death of

the breadwinner and the date of the trial Banda v Chunga 12 MLR (M) 283. This is referred to as the pre-trial loss which the dependants have suffered up to the date of the trial. The deceased died on 18th December 1991. The hearing of the notice of assessment was 22nd November, 1995. It is very close to 4 years.

I first have to calculate the multiplicand. In Cookson v Knowles, Lord Frazer said ibid at page 575 that the loss of support between the date of the death and the date of the trial is the total of the amounts assumed to have been lost for each week between those dates, although as a matter of practical convenience it is usual to take median rate of wages as the multiplicand. The evidence on record in this case shows that the deceased sent to his wife and all his children K160 in two months. This is the sum of money which was solely for his wife and his children and it is the sum of money he gave to his wife after he had paid his tax. I have no evidence of his salary and also of how much he required for himself. The evidence shows that the sum representing dependancy is K960.00 per annum. I have no evidence that this salary would have increased or decreased had the deceased lived and I will take it as representing the median rate of salary and as such it is the multiplicand. For a period of 4 years up to the date of the trial, the loss of dependancy suffered by the plaintiff and the children is K960 multiplied by 4 years which is equal to K3,840.00.

I pass to consider the multiplicand in relation to the post-trial period. For the formula to determine the multiplicand, I again turn to what Lord Frazer said in Cookson v Knowles at page 575. He said, "for the period after the date of the trial, the proper multiplicand is in my opinion based upon the rate of wages for the job at the date of trial. The reason is that that is the latest available information, being a hard fact. It is more reliable starting point for the calculation than the rate of wages at the time of death."

Here again there is no evidence of the rate of wages for, the job of the deceased at the date of the trial. The deceased future prospects are also not known. It is not known whether the deceased would have retired and would have qualified for pension. In view of the paucity of evidence on these matters I shall still take K960 as the multiplicand for post trial period. The case of British Transport Commission v Ourley (1955) 3 ALL E.R. 796 compels, the court, in determining the amount of the plaintiff's actual loss of earnings to which the multiplier is to be applied, to take into account specifically the income tax which if the deceased had continued to work, he would actually have had to pay on his annual salary. However on the facts peculiar to this case K960 per annum is the amount the deceased would have paid to the plaintiff and the children after paying his tax. K960 does not represent his annual salary and infact his salary is not known.

I now have to select a multiplier representing what I consider in the circumstances particular to the deceased to be appropriate number of years' purchase. I am aware that this has to be determined from the time of the deceased death and the factors have to take into account in assessing the multiplier include the age and expectation of the working life of the deceased, the life expectancy if the widow and other dependants, the future prospects of the deceased, engagement by the deceased in some especially hazardous employment and any prospect of the remarriage of the widow. I however also have to take into account that the deceased was not going to produce income in perpetuity and as such the capital fund must be capable of being exhausted over the anticipated period of dependancy. This was stated by Lord Diplock in Cookson v Knowles at pages 567-568. The present range of multipliers used by the courts which has an effective maximum of 18 approximately corresponds to the assumption that the person who invests a sum of money will enjoy a return on his investment of 4 or 5% per year. This is however true in a stable fiscal regime.

Neither the age of the deceased nor of the widow is given. There is no evidence of any prospect of remarriage of the widow. It however cannot be said that the work the deceased was engaged in was hazardous.

The deceased had a first child in 1979. Like in Banda v Chunga I consider the multiplier of 16 to be appropriate in the circumstances I subtract from the 4 years which was used in computing pre-trial loss. This leaves 12 and when I apply it to the multiplicand of K960, I get K11,520.00.

I award this sum to the dependants as damages representing anticipated loss of dependancy during the post-trial period. In total I award the dependants K15,360.00 which I round up to K15,400.00.

I apportion it among the dependants as follows:-

1.	Deceased's wife	K2,400.00
2.	Jane Kambalame	K2,000.00
3.	Edison Kambalame	K2,000.00
4.	Chrisy Kambalame	K2,000.00
5.	Stanley Kambalame	K3,000.00
6.	Gift Kambalame	K4,000.00

I also award the plaintiff costs of the action.

Made in Chambers this 10th January 1996 at Bloantyre.

W.W Soto
DEPUTY REGISTRAR