

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2299 OF 1994



BETWEEN: MARGARET SAPANGA.....PLAINTIFF
AND
THE ATTORNEY GENERAL.....DEFENDANT

CORAM:

W.W. Qoto, Deputy Registrar
R. Mhone of Counsel for the plaintiff
Mrs Chikaya Banda of Counsel for the defendant

W.W. QOTO, DEPUTY REGISTRAR: The action is brought before me for assessment of damages.

By writ of summons issued on 12th December, 1994 the plaintiff claimed against the defendant compensation for loss of dependency in respect of the death of her husband Sosten Sapanga (the deceased) loss of expectation of his life, loss of a motor vehicle and loss of use. The plaintiff further claimed costs of the action.

The deceased who was in the employ of the Immigration Department, died in a road accident on 2nd December, 1993. It is not in dispute that the accident and consequently his death was caused by the negligence of the defendant's agent who was in control of a motor vehicle registration marks MG 130H which belonged to Forestry Department.

I heard evidence from the plaintiff and Mr. Selioni Petros Simfukwe of the Immigration Department. It emerges from their evidence as undisputed that the deceased, at the time of his death, was an Immigration Officer at the rank of Assistant Commissioner of Police and he was based in Lilongwe. At the time of his death, he was aged 51 years. The plaintiff is aged 51 years and there are 9 children in the family.



The wife's evidence was that the children are Judith who was born in 1968, Dave born in 1970, Leo born in 1972, Godwin born in 1974, Elizabeth born in 1976, Maria born 1978, Simplicia born in 1980, Cornelio born in 1982 and Tamala born in 1995. All these children stay with her and she has no gainful employment.

At the time of his death, the deceased was driving his motor vehicle which got damaged in the collision with MG 130H. She told the court that the deceased had told her that he had bought it at K45,000.00. He used to go with this motor vehicle to work but she and the children could use it at home as well.

She did not know his salary but he used to give her K1,100.00 per month for the upkeep of the family.

Mr. Simfukwe testified that he is an Immigration Officer and he used to work with the deceased. At the time of the deceased's death he said the deceased's gross salary was K18,516.00 per annum and his motor vehicle loan entitlement was K12,000.00. The net pay of the deceased was K873.68 because the deceased had a motor vehicle advance for which deductions were Malawi Housing Corporation rent, Police Savings Scheme, Police Welfare Fund, Tax and motor vehicle insurance.

He further testified that in 1992, the retirement age for Officers, like the deceased was 55 years. He could not tell if the deceased had any chances of promotion at his work or if he

carried on any other business to supplement his income. After his death, the plaintiff was paid the death gratuity.

He conceded in cross-examination that for using his personal motor vehicle on official duties, the deceased would earn allowances.

I take Judicial notice of circular Ref. No. PD/103/8/ID/VIII/4 dated 20th November, 1992 from the Secretary For Personnel Management and Training that at the time of the deceased's death, the retirement age was 50 years and those who wished to extend that period had to seek authority of the Government.

As I said conceded by Mr Simfukwe for the defendant that for using his motor vehicle, the deceased could earn extra income to supplement his salary and I am prepared to accept the plaintiff's evidence that he used to give her K1,100.00 per month for the upkeep and maintenance of the family.

I have read submissions of both counsel and I take them into account in writing this order of assessment of damages.

I contrive to deal with the claim for damages for loss of expectation of life first. It is now settled that an award of damages under this head is conventional and small awards have been the order of the day since the decision of the House of

Lords in BENHAM V GAMBLING (1941) A.C. 157. In that case their Lordships substituted for a figure of £1,200 an award of £200 for loss of expectation of life. It was again decreed by the House of Lords in this case, that damages under this head are rather awarded for loss of prospective happiness. Thus the court must be satisfied that the circumstances of life in question were calculated to lead, on balance, to a positive measure of happiness which has been curtailed by the negligence of the defendant. Admittedly the deceased had a very large family which comprised 9 people. His wife was not an income earner. Pausing there one would say, and indeed counsel for the defendant submitted, that the deceased did not have prospective happiness. However, there is evidence, which is controverted and which I accept, that the deceased was a Senior Officer in the Immigration Department. While it would be fallacious to assume that all human life continuously enjoyable thing, it is impossible to say that the deceased did have prospective happiness. Speaking about the non-economic losses which are compensated for by conventional awards, Lord Diplock in WRIGHT V BRITISH RLY BOARD (1983) A.C. 773 said,

"Such loss is not susceptible of measurement in money. Any figure which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to all litigants should be even-handed instead of depending on idiosyncracies of the assessor the figure must be "basically a conventional figure derived from experience and from awards in comparable cases."

I have looked at awards made in this court in comparable cases. I have also gleaned from my experience knowledge about awards I have made in cases of this kind. It would be a work of peregrination if cited these comparable cases. Suffice to say that I award K10,000.00 for loss of expectation of life.

I now turn to consider the claim for loss of dependancy. The leading case on this type of claim is DAVIES V POWELL DUFFRYN ASS. COLLIERIES LTD (1942) A.C. 601. At p.617 Lord Wright said,

"There is no question here 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. The starting point is the amount of wages which the deceased

was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a certain number of years' purchase."

In BANDA AND CHIBUKU PRODUCTS LTD V CHUNGA 12 MLR 283, this approach was adopted by this High Court. The general principle governing loss of dependancy is that the dependants of the deceased whose death is caused by the tortious act of the defendant " are entitled to such sum as will make good to

them the financial loss which they have suffered and will suffer as a result of the death," (per Lord Reid in TAYLOR V O'CONNOR (1971) A.C. 115 AT 127.

While the governing principle is clear, the assessment of damages is extremely difficult because there are so many imponderables upon which it is based. I must consider, in my assessment, the length of time during which the deceased would have probably continued to work and the amount he would have earned during that period. I must also have regard to the deceased's age and state of health, his actual earnings immediately before his death and the prospects of any increases in his earnings due to promotion or other reasons. As I have said, the conventional method of calculating damages for loss of support is to apply to what is found upon the evidence to be the dependency (multiplicand) a multiplier representing what I will consider in the circumstances particular to the deceased to be the appropriate number of years' purchase.

To find a multiplicand which is a figure representing the annual value of support lost by the dependants of the deceased, is easy. It is based on the income of the deceased. In the present case the net of the deceased's annual salary was K18,516.00. His net salary was however K873.68 per month. However, I have the evidence of the plaintiff which is uncontroverted, that the deceased used to give her K1,100.00. There was evidence of Mr. Simfukwe that the deceased used to earn allowances for using his motor vehicle on duty. Thus although his net pay was lower than K1,100.00, I accept the plaintiff's evidence on this score. I accordingly assume that K1,100.00 per month is actively the income the deceased gave to the plaintiff for the support of his family. On this assumption the deceased would have made available for support of his family K13,200 per annum. This would be the annual value of dependency. However, I must then take into account the rate of increases of wages paid to those in the same occupation as the deceased between the date of death and the date of trial. According to the circular from the Secretary for Human Resources Management and Development Ref. No. PD/103/1/28/VI/72 and 15th December, 1995, the starting salary for an S7 which rank the deceased was at the date of his death is now K32,544.00. I accordingly assume that the deceased would have increased his support had he lived.

However at the time of his death the deceased was due for retirement. He was above the mandatory retirement age of 50 years. Since he was aged 51 years at the time of his death, I am prepared to assume that his services had been extended and this was authorised and I am prepared to assume that his services had been extended and this was authorised and I am prepared to assume that he would have retired at the date of the trial. I have already heard that the deceased's income would have been increased to K32,544.00 and I am prepared to assume that he would have been giving his wife K1,600 per month for

support of his family. From the date of his death to the date of the trial is 3½ years. The pre-trial loss is therefore K6,000.00.

I have assumed that the deceased would have retired at the date of the trial. There was no expectation of the working life of the deceased. I accordingly make no assessment about post-trial loss.

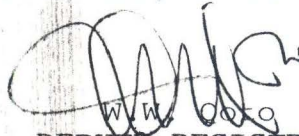
I turn to the claim for loss of motor vehicle. This is a claim for special damages. The plaintiff's evidence was that this was the value of the deceased's motor vehicle. The defendant on the other hand, argued that the deceased's motor vehicle loan entitlement was K12,000.00. I am prepared to accept the wife's evidence and I find it as a fact that the value of the destroyed motor vehicle is K45,000.00. I award it to her.

There is again a claim for loss of use. In the case cited to me on this claim, it is clear that this claim is compensated for by an award of conventional damages which are small. I award K5,000.00 for loss of use.

The K6,000.00 loss of dependency is apportioned among the following dependants in equal shares, the plaintiff, Leo, Godwin, Elizabeth, Simplicia and Cornelio. I have excluded the other children according to ESTER CHOTSAINÉ V STRANGER D. MALEKAN & PENOHT SONS TRANSPORT CIV. CAUSE NO. 112 OF 1987 dependency in relation to children, ceases when attains the age of 21 years. The last child, born in 1995, cannot be included.

In total I award the plaintiff K56,000.00 and costs of the action.

MADE IN CHAMBERS THIS 17TH MAY, 1996.


W.W. COTO
DEPUTY REGISTRAR