



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO 234 OF 2019

Library



BETWEEN

MARY NANKWENYA

(suing on her own behalf and on behalf of the beneficiaries of the Estate of JOHN CHINTHENGHA, the deceased).....CLAIMANT

-AND-

ISAAC CHAPLAIN.....1ST RESPONDENT

PRIME INSURANCE COMPANY LIMITED.....2ND RESPONDENT

CORAM: Texious Masaomphambe, Deputy Registrar

Mr Mickeus, Counsel for Claimant

Golden and Law, Representing the Defendant, Not present

Miss Mada Galafa, Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Background

This order on assessment of damages follows judgement on liability entered by Honourable Justice Chigona on 30th October, 2019 against the second defendant. The Claimant claims damages for loss of dependency, damages for loss of expectation of life, funeral expenses and costs of this action. The Claimant commenced action against the Respondents on her on behalf and behalf of the beneficiaries of the estate of John Chinthenga, who, at the time of his passing, was her husband.

Facts

The 1st Respondent was at all material times, a driver of a motor vehicle registration number **BU 884**, Nissan Tiida, Saloon. The 2nd Respondent was an insurer of the said vehicle which at all material times was covered under insurance policy Number **131272527** issued for the period spanning from 7th March 2018 to 6th March 2019.

On or about 18th September, 2018, at about 09:18 hours, Mr John Symon Chinthenga was cycling his pedal cycle from the direction of Limbe Cathedral towards Blantyre along

Tsiranana Road. Upon arrival at **ADMARC** offices he hit rear passenger side door of a motor vehicle Registration Number **BU 884** Nissan Tiida that opened itself.

Evidence

The Claimant, Mary Nankenya, told the court that she was from Manchombe Village, T/A Likoswe in Chiradzulu. She was the wife to the deceased. She tendered a written statement as part of her evidence, and the same was marked as **Exh MN1**. It was in her testimony that the deceased was her husband. It was her testimony that on or about 18th September, 2018, at about 09:18 hours, Mr John Symon Chinthenga was cycling his pedal cycle from the direction of Limbe Cathedral towards Blantyre along Tsiranana Road. Upon arrival at **ADMARC** offices he hit rear passenger side door of a motor vehicle Registration Number **BU 884** Nissan Tiida that opened itself while the vehicle was in motion. As a result of the accident, the deceased sustained head injuries. He was rushed to Queen Elizabeth Hospital where he died on 22nd September, 2020, while receiving treatment.

The deceased was a carpenter and the bread winner for his entire family. He left nine children who all depended on him. She further said that since the death, life never remained the same. He was paying fees for his children and his last born was still in Secondary School. The deceased was enjoying good health before his death.

During the funeral ceremony, they spent **K500,000.00** for coffin, food and transportation. No receipts were available for all these expenses.

Applicable Law

In civil cases, the burden of proof is on the Claimant. It is trite rule of evidence that any point of issue has to be proved by the party who asserts. This was affirmed in **Constantine Line v Imperial Smelting Corporation [1943]AC 154 ,174** Lord Meghan said he who invokes the aid of the law should be the first to prove his case because in the nature of things, a negative is more difficult to establish than an affirmative.

The standard of proof in such cases is balance of probabilities. This was holding of Lord Denning in **Miller v Minister of pensions [1947]2 All ER 372** in which he observes the following

“If the evidence is such that the tribunal can say ‘we think it more probable than not’ the burden is discharged, but if the probabilities are equal, it is not.”

Similar in assessment of damages, Claimant has to prove his injuries to the Court in order to be entitled to damages: see **Ngosi t/a Mzumbamzumba Enterprises v H. Amosi Transport Co Ltd [1992]15MLR 370 (HC)**

As to the measure of damages, the general rule is highlighted in the speech of Lord Blackburn in **Livingstone v Raywards Coal Co (1880) 5 App Case 25 at 39**, where Lord Blackburn said

“Where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation”

There is no specific mathematical formulae for determining the amount of damages to be awarded, as a result it is always difficult to compensate the Claimant in a manner that matches the injuries suffered: see **Elida Bello v Prime Insurance Company Limited, Civil Cause No 177 of 2012(unreported)**. The court always aims at awarding the Claimant fairly and adequately.

In present matter, the Claimant is claiming damages from the Respondents because of them being found liable for the death of her husband. In such circumstances, damages fall under two headings thus loss of expectation of life and loss of dependency.

Loss of Expectation of Life

Damages under this head are awarded to the Claimant where the death of deceased has reduced the deceased expectation to life: **Flint v Lovell**[1935] 1 KB 354. Damages under this head also survives the demise of the deceased and thus available to personal representatives 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.

In determining the amount of damages to award on under this heading, the court will consider awards made in similar decided cases. In **Esther Kassim (suing on behalf of the estate of Losani willy, deceased) v Stanley Dimusa and Prime Insurance Company Limited, Personal injury cause number 56 of 2015** the court awarded K1,200,000.

In **Anne Chilanga (suing on behalf of the beneficiary of Friday Nyopola) v Duncan Nyalungwe and Prime Insurance Company Limited, personal injury cause number 659 of 2011**, an award of K1,500,000 was made.

In **Paul Chamaza (on behalf of the estate of Ivy Chamaza (decease) and 2 others v Edward Nyirenda and Prime Insurance Company Limited, Personal Injury Cause Number 383 of 2014**, an award of K1,200,000 was made.

In **Malingaliro Elia and Others v Paramount Electrical Engineering Company, Personal Injury Case No 215 of 2017**, the court awarded K2000,000.00 for loss of life.

In the case at hand, there is no evidence that the deceased was not in good health at the time of his death. On that basis and in the light of the awards in the cases cited above, I award the Claimant **K2, 000,000.00** for loss of expectation of life.

Loss of Dependency

Under this heading, damages are to be calculated in reference to 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**. Dependent of the deceased need not 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 dependent was receiving pecuniary benefit at the time of the death, a purely prospective loss being sufficient thus a dependent parent might not have reached an age 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.

With regard to actual calculations of loss of dependency, the courts have adopted what is termed the multiplicand and the multiplier formula: see **Mtelera v Sabot Hauliers 15 MLR 373** and **Mallet v McMonagle (1970) AC 166,175**. The multiplicand is the deceased's monthly income whilst the multiplier is the approximated number of years the deceased would have lived if it were not for the wrongful death. This is established by subtracting the deceased age from the life expectancy age. At present life expectancy in Malawi is pegged at 61 for males and 67 for females.

In order to arrive at the level of dependency, the multiplicand is multiplied by the multiplier and then the figure of 12 representing the number of months in a year. Whatever the product, there is a reduction of 2/3, representing the portion the deceased would have presumably expended on purely on personal needs

The formula is illustrated as follows:

Monthly net income x 12 (being number of months in a year) x number of years deceased could have lived x 2/3

In the present case, according to the evidence given by the Claimant, the deceased was a carpenter. There was no proof of how much he was making per week or per month. He died at the age of 69.

A deceased without proper income does not necessarily mean that his estate will not be entitled to damages under the heading of loss of dependency. The court has adopted the minimum wage as the basis for calculations in such circumstances: see **Malingaliro Elia & others v Paramount Engineering Co. Civil Cause No 215 of 2017**.

The minimum wage at the time of his death was pegged at **K25,000.00**. This is a figure that is to be the multiplicand. As to the multiplier, it is the difference between the age of the deceased at death and the current life expectancy age minus years to cater for vicissitudes of life.

The Claimant says the deceased was 69 years old at the time of his death. There is death certificate that confirms this age. He died way beyond the expectancy of life. . In any event, it is believed that he would live for some more years if it were not for this untimely and wrongful death. In the circumstances, I have no choice but award a nominal sum of **K1,000,000.00** under this head of loss of dependency. Further, in the absence of proof that they spent the sum of **K500,000.00** for funeral expenses, I award the claimant a nominal sum **K300,000.00** as funeral expenses.

In total the Claimant is awarded **K3,800,000.00**. Defendants are condemned in costs.

Made in Chambers this Friday, the 22nd day of April, 2020 at Blantyre.


Texious Masoamphambe

DEPUTY REGISTRAR