



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL CASE NUMBER 790 OF 2019



BETWEEN

PULISIRA KATANDIKA MTHONGA (suing as a widow and on behalf of the dependents of the estate of **MOSES MTHONGA**-deceased).....CLAIMANT

AND

LIBERTY GENERAL INSURANCE COMPANY LIMITED.....1ST DEFENDANT

FELIX MALUWA.....2ND DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. G. Phiri- of Counsel for the Claimant

Mr. Kandeya-of Counsel for the Defendants

Mr. Chimtengo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

The action herein arose following the death of Moses Mthonga who was hit by a vehicle registration number BT 3709/BQ9977 Howo Sino-Tractor Truck semi trailer which was being driven by the 2nd defendant. The facts as discerned from the record indicate that Mr. Mthonga was walking off the road at Miseufolo Trading centre along Ngabu-Nchalo road when he was hit by the vehicle in question.

The claimant suing as a widow and on behalf of the other dependents of the estate of the deceased herein, through a writ of summons issued on the 18th of September 2019, commenced this action claiming damages for loss of dependency, loss of expectation of life and the cost of the action. This is the court's order on assessment of damages pursuant to an order by Honourable Justice N'riva following the mediation session held on the 4th of November 2019.

The hearing on assessment of damages was held on the 7th of February 2019. The claimant was the sole witness for her case. She adopted her witness statement and tendered a Death Report and a Police Report marked "PKM1" and "PKM2" respectively. In her witness statement, she averred that her husband died in a road accident on the 1st day of December 2018 at 1200hrs at Miseufolo Trading Centre along Ngabu-Nchalo road. She further indicates that the deceased died at the age of 28 years and is survived by two sons and a daughter and two brothers George and Robert. In cross-examination, she stated that she knew the age of the deceased and re-iterated that he died at the age of 28 years. She also stated that their children, Aaron is 10 years old, Judith is 7 and Paul is 2. She also stated that they stay with the deceased's brothers in a village set-up and that the brothers were staying in their own houses. She stated that the deceased's father died way back but the mother is alive. She stated that the deceased's elder brother also passed on.

Such was the evidence on assessment of damages. Counsel for the claimant adopted his skeleton arguments as final submissions. The defendants did not parade witnesses however Counsel for the defendants undertook to produce the policy of insurance for the vehicle in question and further to file submissions within 14 days. However, the defendants did not meet their undertakings by the expiry of the requested period. As aforesaid, this court has been called upon to make a determination on what could be a reasonable quantum to compensate the claimant on the loss she suffered to wit loss of dependency and loss of expectation of life.

The purpose of awarding damages is to compensate the injured party as nearly as possible as money can do. That is to say, to place the Plaintiff in a position he would be had he not suffered the damage (See *Livingstone v Rawyards Coal Company* (1880) 5 AC 25). This is what is termed the principle of *restitutio intergrum*. It is not possible to quantify fully damages for loss of dependency and loss of expectation of life. However, court use comparable cases as a guide in coming up with a reasonable quantum of damages. See the case of **Kalinda -vs- Attorney General** (1992) 15 MLR 170 at p 172. The Court will also consider factors like passage of time when the award was made, as well as the value of the kwacha at the time of making the award.

On loss of expectation of life, awards under this claim are awarded for the loss of the life the deceased was expected to live without necessarily attaching value to the years but to the untimely demise of the person. The court generally takes into account the country's life expectancy, health of the deceased as well as age. See the case of **Samuel Chawanda v Attorney General, civil cause number 3556 of 2002**. In this case, under loss of expectation of life Counsel for the plaintiff cited the case of **Linda Tembo V Prime Insurance Company Limited**, Personal Injury Cause no. 274 of 2013 High Court Zomba District

Registry, in which the court awarded the sum of K1,000,000.00 as damages for loss of expectation of life. Counsel therefore contends that in the present case the deceased died aged 29 and considering the devaluation of the kwacha since the said awards were made the sum of **K1,100,000.00** would adequately compensate the plaintiff for loss of expectation of life.

In the present matter, the deceased died at the age of 28. He was fairly young I would say if we are to consider the life expectancy in Malawi. In the case of **Benham v. Gambling** [1941] 1 All ER. 7 was the first case in which the House of Lords considered the question of the amount of damages that should be awarded for loss of expectation of life. The facts were that a child of 2 died as the result of a motor accident and was awarded £1,200. The House of Lords in considering the case, took into account the dictum of Asquith J. "that human life must be assumed on the whole to be an advantage rather than a disadvantage, and, if the victim has had its life reduced by a longer period, that is a graver disadvantage in respect of which larger damages ought to be awarded than if its life had been reduced by a shorter period."

That notwithstanding, what I found lacking in the evidence presented before the court was the aspect whether the deceased had a prospect of living a predominantly happy life *see* **Rose v Ford** {1937} AC 826. Apparently, if the character or habits of the individual are calculated to lead to an unhappy or despondent future, the amount awarded should be proportionately smaller. I take note that there was no attempt at all to show whether the deceased in fact enjoyed tip top health or indeed there was something that would have hampered his enjoyment of life. All the same, I hold the view that the figure that is to be awarded ought to be conventional based on awards made in cases similar to the one under consideration. In the circumstances, I am of the considered view that the **K1,100,000.00** prayed for is a fair and reasonable compensation for loss of expectation of life which amount I award the claimant.

On loss of dependency, the underlying principle is to put the deceased's estate in a financial position the estate would have been had it not been for the accident. In arriving at the award, court use the multiplier and multiplicand formula, see also the case of **Chiwanda -vs- Attorney General Civil cause No. 3556 of 2002**. Multiplier is an estimated number of more years the deceased would have lived if it were not for the wrongful death. Multiplicand is the figure representing the deceased's monthly income. Loss of dependency is therefore calculated by multiplying the multiplicand by the multiplier and a figure of twelve representing the months in a year. Then a reduction of one third of the product is made to take into account sums the deceased would have spent on purely personal pursuits.

In this case, the court takes note that the deceased died at the age of 28. The World Health Organization puts the life expectancy for males in Malawi at 56.7 years www.worldlifeexpectancy.com/malawi-life-expectancy. The court takes into account the fact that there would have been other factors that would have shortened the deceased's life. I would have to adopt a multiplier of 20. The deceased's earnings are

not known as such the minimum wage which of now is K35,000.00 shall be used. However, I shall consider that the deceased was a family man with three children of tender age. I want to believe that the children still have a long way to go in life and the untimely demise of their father has dealt a big blow to their education and general welfare. Thus, loss of dependency is calculated as follows:

$$\text{K35,000.00} \times 20 \times 12 \times \frac{2}{3} = \text{MK5, 600, 000.00}$$

From the foregoing analysis, the damages awarded to the Claimant can be summarized as follows:

1. The sum of **K1, 100, 000.00** as damages for loss of expectation of life.
2. The sum of **K5, 600, 000.00** as damages for loss of dependency.

In total, therefore, the Claimant is awarded the sum of **MK6, 700, 000.00**. The Claimant is further awarded costs of the assessment.

MADE IN CHAMBERS THIS 28TH DAY OF FEBRUARY, 2020


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR