



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NUMBER 78 OF 2020



BETWEEN:

DALIYA NORMAN FLETCHER (Suing on her own behalf and on
behalf of the beneficiaries of the Estate of ALINAFE FLETCHER-deceased).....CLAIMANT

AND

PATRICK CHATAIKA.....1st DEFENDANT
PRIME INSURANCE COMPANY LIMITED..... 2nd DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mickeous- of Counsel for the Claimant

Chimtengo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

The deceased in this matter was hit by a motor vehicle registration number PE6076 Toyota Sienta as she was crossing the road at Koma Croc resulting to her death. Through a writ of summons issued on the 13th of March 2020, the Claimant commenced this action claiming damages for loss of expectation of life, loss of dependency, funeral expenses and costs of this action. This matter comes for assessment of damages following a default judgment on liability entered in favour of the claimant on the 28th of April 2020. This is the court's order on assessment of damages.

The uncontroverted evidence that the claimant is the mother of the deceased, Alinafe Fletcher. On the 7th of January 2020, the deceased was hit by motor vehicle registration number PE6076 Toyota Sienta as she was crossing the road at Koma Croc resulting to her death. The claimant avers that her daughter was hardworking and a helpful person who helped her with small errands like going to buy things at the grocery. She could assist with cleaning of dishes after the meals. She has been described as intelligent and hardworking pupil who could get very frustrated whenever she failed at school. The claimant laments that she and the family and the community lost a great person.

As earlier stated, this court has now been called upon to make a determination on what could be a reasonable quantum to compensate the claimant on the loss she suffered to with 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 claimant in a position he would be had he not suffered the damage. 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, courts 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.

Loss of expectation of life

The claimant is awarded damages for loss of expectation of life. Damages under this head are claimable on the basis of loss of prospective happiness by the deceased. The leading authority on this matter is the House of Lords decision in *Benham V. Gambling* (1941) 1 ALL.E.R.7. In that case a boy aged two and half years was killed in road accident. His father claimed damages arising out of the diminution of the child's expectation of life. Viscount Simon L.C, enunciated the following considerations which should guide the court in assessing damages for loss of expectation of life especially in case of a child:-

The main reason why the appropriate figure of damages should be reduced in the case of a very young child is that there is necessarily so much uncertainty about the child's future that no confident estimate of prospective happiness can be made. When an individual has reached an age to have settled prospects, having passed the risks and uncertainties of childhood and having in same degree attained an established character and firmer hopes, his or her future becomes more definite and the to which good fortune may probably attend him at any rate becomes less incalculable.

In the present matter, Counsel for the claimant proposes K2,500,000.00 as damages for loss of expectation of life. He invites the court to have recourse to the following cases:

- **Paul Chamaza (on his own and on behalf of the dependant of Mrs Ivy Chamaza (deceased), Elason Dzuwa and Chifundo Mnenela v Edward Nyirenda and Prime Insurance Company Ltd. Personal Injury Cause number 1165 of 2010** in which the court on the 22nd of April 2016 awarded the sum of K1,200,000.00 as damages for loss of expectation of life.
- **Alex Chigwale (on her own behalf and on behalf of the beneficiaries of the estate of Yvonne Chigwale) V Electricity Supply Corporation of Malawi, Personal Injury Cause no. 619 of 2014**, in which the court awarded the sum of K1,800,000.00 as damages for loss of expectation of life. The award was made on 7th August 2018.

Counsel submits that it is a principle of law that the court ought to adjust the awards according to how the value of the money has depreciated. He points out that in this case the Malawi kwacha has depreciated so many times as such it would only be fair that the claimant be awarded K2,500,000.00 as damages for loss of expectation of life.

In the present case it is necessary to consider what kind of life the deceased would have enjoyed had she not lost her life in the accident herein. There is no evidence that the deceased would have had an unhappy life. According to her mother she was doing well in school and was assisting in domestic work. The deceased was aged 6 doing standard one at school. This shows that her education progress was at its infancy. It is not known how far she would have reached in her education. All the same, the conclusion which can be reached here is that the deceased could have enjoyed average happiness, subject to the normal risks and uncertainties. I am of the view that damages for loss of expectation of life should be moderate. Having looked at the authorities cited by Counsel under this head, I find that **MK2, 000, 000.00** is fair recompense to the claimant for loss of expectation of life.

Loss of dependency

The plaintiff claimed damages for loss of dependency. Salmond on the Law of Torts, 17th Edition, Sweet & Maxwell 1977: 582-587, reasons that damages for loss of dependency is premised on the proof of a pecuniary loss by the death of the deceased. A widow recovers damages for loss of financial support by her deceased husband. Children recover the portion of income their father would have expended on them during his working life and while they are still minors. The practice of the High Court has been to apply

the multiplier and multiplicand principle in arriving at the quantum of damages for loss of dependency.

Mbila and another v Attorney General 16[1] MLR 313

Salmond (supra) states that the multiplier is the estimate of the probable length of the deceased's earning period. The amount earned is subjected to deductions like the sums that would have been spent by the deceased on himself. **Kundwe v Stagecoach Malawi Limited, 16[2] MLR 556**. The uncertainty of farming and business had the deceased lived, the prospects of re-marriage by the surviving spouse are all taken into account after the multiplier is determined.

In this case, counsel for the claimant moves the court to consider the multiplier as 57 years (being 6 years less from life expectancy pegged at 63 according to www.worldbank.org/en/country/malawi/overview). He further motivates the court to use K35,000.00 as the minimum as at 1st January 2020 divided by $\frac{1}{3}$ for the sum the deceased could have used for her personal pursuits. Therefore using the multiplier/multiplicand formula loss of dependency Counsel is of the view that damages for loss of dependency would, thus, be

$$K35,000.00 \times 12 \times 57 \times \frac{1}{3} = K15,960,000.00$$

The court takes note that the deceased was only six years old. She was no doubt not earning as presupposed by the formula. The evidence indicates loss of service and nothing pecuniary. It cannot be seen how sending a child to buy bread can be a service of pecuniary benefit unless there was evidence that had he not done so as a servant or someone else would have been paid to undertake the service. It cannot be said that any service carried out by a child for the benefit of his family has a pecuniary value capable of being compensated as pecuniary loss. The question is whether the formula ought to be applied in its strictest sense as done by Counsel above. Salmond (supra page 585), citing *Daniel v Jones* (1961) 1 W.L.R 115 makes the point that at the end of the day, arithmetic may have to be mitigated by common sense, for it is an assessment and not a calculation which is being made. It is on this regard that this court is compelled to cut down the figures proposed by the claimant in order to achieve a just end as follows:

$$K35,000.00 \times 12 \times 10 \times \frac{2}{3} = K2,800,000.00$$

Funeral Expenses

The claimant also prays for K500,000.00 being payment of funeral expenses. I presume this is meant for transport and some common transactions that are expected at funerals. There was no evidence to support this expenditure. This, however, does not mean there was no expenditure made as funeral expenses. I believe it is very difficult to expect a bereaved family to keep receipts of whatever they purchased during

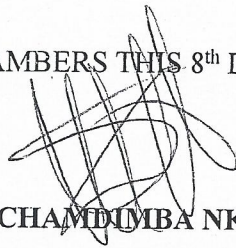
the funeral. I therefore award the claimant the sum of **MK500, 000.00** as funeral expenses as prayed for. However, Counsel also prays for a reimbursement of K20,000.00 for procuring a Death Report. Likewise, no evidence has been furnished that the same was expended for this purpose. On this part, this court is compelled not to make an award considering that the claimant had

In summary, the claimant is awarded as follows:

Loss of expectation of life	- K2, 000, 000.00
Loss of dependency	- K2, 800, 000.00
Funeral expenses	- K500, 000.00

In total, the claimant is awarded **K5, 300, 000.00**. The claimant is further awarded costs for the assessment of damages proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 8th DAY OF JULY 2020



WYSON CHANDUMBA NKHATA

ASSISTANT REGISTRAR