



THE REPUBLIC OF MALAWI
 IN THE HIGH COURT OF MALAWI
 LILONGWE DISTRICT REGISTRY
 CIVIL DIVISION

CIVIL CAUSE NO.843 OF 2020

BETWEEN

BESTER SAIDI and MADALITSO NGOLOWEKA (suing as Administrators of the Estate of Nancy Saidi (Deceased)

.....CLAIMANT

AND

ATTORNEY GENERAL.....DEFENDANT

CORAM:	<i>Madalitso Khoswe Chimwaza</i>	<i>ASSISTANT REGISTRAR</i>
	E.D Salima	Counsel for claimant
	C. Zude	Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

This matter was set down for assessment of damages and costs following the striking out of defence and entering judgment against the defendant on 9th August 2021 pursuant to Order 13 (rule 6(1) (a) of the Courts Act. The defendant did not attend the assessment hearing despite being served with notice. Therefore, the matter will be determined on the unchallenged evidence of the claimant.

Brief Facts and Evidence

On 27th October, 2017, at or about 1 O'clock in the afternoon strong winds brew off the roof of school block at the deceased's school at Katambasula Primary School a government school at Ntaja, Machinga District.

As a result of the accident the deceased was hit at the back by the iron sheets and she bled profusely and was pronounced dead by medical personnel. The death was caused by the injury sustained by the iron sheet and therefore by the negligence on the part of Malawi government by failing to reinforce the school blocks roofing sheets so as to avoid such incidents from happening and by allowing children to learn in such unsafe conditions. The witness adopted

the witness statement and the attached, death certificate, letter from the DEM about the accident, police report and letters of administration.

The claimant is seeking damages for loss of life and loss of dependency costs of the action following the accident.

Issue for Determination

How much should be awarded as damages

General Principles on Damages

A person who suffers injury as a result of another's negligence is entitled to be compensated for the injury suffered by the negligent party. Such damages are awarded to compensate the plaintiff in so far as money can do (see *Nakununkhe v Paulo Chakhumbira and Attorney General* Civil cause no.357 of 1997 (Unreported). As was held in the case of *Namwiyo v Semu et al* [1993] 16 (1) MLR 369, in awarding compensation, the court attempts to put the plaintiff in the position he would have been but for the injury arising from the tort. Such damages however cannot be quantified by any mathematical calculation as such the court relies on decided cases of a comparable nature for guidance. Sight must not be lost however, of peculiar facts of each case in order to avoid occasioning injustice by inflexible maintenance of consistency and uniformity (*D. Kwataine Malombe & Another vs. G.H. Chikho t/a Bec Line Minibus* Civil Cause No. 3687 of 2001 (HC Unreported).

LOSS OF EXPECTATION OF LIFE

The principles for the award of damages for the loss of expectation of life were enunciated in *Benham vs Gambling* [1941] 1 ALL ER 7. that when assessing damages generally, the court is engaged in an exercise of trying to put a value to the loss or damage suffered by the plaintiff. In a claim for expectation of life, the first question therefore ought to be what is it that the plaintiff lost? It is that which the plaintiff has lost that must be valued. It has been held that it is the prospect of a predominantly happy life that has to be valued, hence the damages are in respect of loss of a measure of prospective happiness, taking into account the ups and downs of life depending on circumstances of each individual life. It is not the prospect of the length of days that is to be valued.

The court will assess these based on previous comparable awards. In *John Chirwa vs Alfred Majamanda , SMEDI and Prime Insurance Co.* Civil cause No. 1of 2016, the court awarded the sum of K1,500,000 for loss of expectation of life. In a more recent case of *Margaret Potani vs Edred Phiri and Prime Insurance Co. Ltd* Civil cause no. 869 of 2015 the court awarded a sum of K1,200,000 for loss of expectation of life. Counsel cited the cases of *Sharra vs Attorney General (Min of Heath)* Civil cause No. 252 of 2019 where the court awarded MK2,000,000 as damages for loss of expectation life of an infant. Similary in the case of *Aubrey Gama vs Daniel Banda, Mchinji District Assembly and Prime Insurance Limited* Civil Cause No. 448 of 2019, the court awarded MK2,000,000 as damages for loss of expectation of life. In the instant case the court is of the view that a sum of MK 2,000,000.00 would be reasonable and just. It is so awarded.

LOSS OF DEPENDENCY

A claim for loss of dependency is founded on sections 3 and 4 of the Statute Law (Miscellaneous Provisions) Act. The value of dependency is expressed as the amount of pecuniary benefit which the dependent could reasonably expect to receive from the deceased

in future. The general principle governing loss of dependency is that the dependents 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 untimely death. To arrive at the award to be made for loss of dependency the courts use what is known as the multiplicand and multiplier formula (See *Dimingu & others v. Attorney General Personal Injury Cause No. 749 of 2012 (unrep)*).

The multiplicand is a figure representing the deceased's monthly earnings whereas the multiplier is an estimated number of more years the deceased would have lived if it were not for the wrongful death. For the multiplicand, the court looks at the deceased's earnings at the time of death. Then a reduction of one third of the product is made to take into account sums the deceased would have expended on purely personal pursuits and expenses.

It is trite that in calculating loss of dependency courts use what is termed the multiplicand and multiplier formula. In ascertaining the multiplicand, the court basically looks at the earnings or income of the deceased. Where the deceased had no fixed income, the Court use the minimum wage applicable at that time. *Emily Jenala (as administrator of the Estate of James Jenala on her own behalf) vs David Chigo and Prime Insurance*. It was submitted that the loss of dependency should be pegged at a minimum wage of K50,000 which is according to the *Employment (Minimum Wages) (Wet Cargo and Dry Cargo Truck Drivers) Order of 2020*. This Court agrees with the proposal as the general minimum wage is at K1,923.08 per day which translates to K50,000.00 per month.

On the multiplier, the claimant submitted that the court should use the life expectancy of 50-55 years. (*Londoni vs Prime Insurance Company, personal injury case No. 742 of 2012* and *chilinga vs Nyalugwe and another personal injury case No. 659 of 2011*). The deceased in this case died at the age of 16 which means she could have lived for a further 34 years in regards to the life expectancy, but for this untimely death. The Court will take into account the vicissitudes of life which could have reduced the life of the deceased anyway the court will adopt 25 years. Further on account of the fact that the court is going to make a lump sum award it will be reduced by 1/3 to factor in the sum of money that could have been spent by the deceased on her personal life.

Multiplicand and multiplier:

$MK50,000 \times 12 \times 25 \times 1/3 = MK5,000,000.00$

Party and Party Costs of the Action

The general principle is that costs are discretionary as per *Order 31 rule 3 (1) of the CPR* and also the case of *Hahn vs Spearhead Holdings Ltd and Others [1990] 13 MLR 143 (HC)*. Costs normally follow the event, and this means a successful litigant will be entitled to costs of the action.

Looking at the history of the matter not being complicated, the documents on the file and skill and industry employed by Counsel to mediation stage where it was settled, the Court awards K1,500,000.00 as party and party costs summarily on a standard basis as being reasonably incurred and proportionate to the amount of work done on the case pursuant to *Order 31 rule 4 and 5 (1) (a) (i) (ii) of the CPR*.

Order

The claimant is awarded a total sum of K7,000,000.00 as damages on all the two heads of damages. Party and party costs are assessed summarily at K1,500,000.00.

Right of Appeal

Either party aggrieved by this order of assessment has the right to appeal to the Supreme Court of Appeal.

Made in Chambers this 4th day of August, 2022 at High Court Lilongwe Registry



Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR