



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

Civil Cause Number 787 of 2011

BETWEEN:

**MERCY KALAJIRA (suing on her own behalf and on behalf of the estate of HARRISON KALAJIRA).....CLAIMANT
AND**

ATTORNEY GENERAL (MALAWI POLICE SERVICE).....DEFENDANT

CORAM:	C MANDALA:	ASSISTANT REGISTRAR
	Chembezi:	Counsel for the Claimant of GD Liwimbi & Partners
	Defendant:	Attorney General's Chambers
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Default Judgment entered on 23rd June 2017. The Claimant was awarded damages for loss of expectation of life, loss of dependency, and costs of the action.

The claim arose from an accident that occurred on 16th October 2009 at Lingadzi Bridge in Lilongwe where the deceased (a traffic police officer) was ran over by a car while on official duty in the Defendant's employ. The Claimant exhibited letters of administration issued on 25th October 2011.

EVIDENCE

Mercy Kalajira filed a witness statement as the Claimant's evidence in chief. This evidence was undisputed. It states (in part):

7. ***THAT I am the Plaintiff in this matter.***
8. ***THAT I am suing on my own behalf of the estate of Harrison Kalajira.***
9. ***THAT I am the widow of the said Harrison Kalajira.***
10. ***THAT I was duly appointed administratrix of the said estate of Harrison Kalajira on 25th October 2011 following the death of my husband, the said Harrison Kalajira, per exhibit MK1.***
11. ***THAT my late husband died after sustaining injuries in an accident that occurred on 16th October 2009 per death report exhibit MK4 and police report exhibit MK3.***
12. ***THAT the deceased died intestate on 16th October 2009 in the course of employment around Lingadzi Bridge in the city of Lilongwe.***
13. ***THAT until his death my husband was a Malawi Police Service Officer of the rank of Constable and bearing service number A8955.***
14. ***THAT at the time of his death, my husband was a healthy young man of 29 years and, as a sole supporter of his family, he was responsible for all expenses of running the family.***

15. **THAT** at the time of his death my husband's earning capacity was K14,800 per month per copy of a pay slip **exhibit MK2**.
16. **THAT** on the said 16th October 2009, my husband, in executing his duties as a Police Road Traffic Officer, stopped a certain vehicle and whilst checking that vehicle, he noticed another vehicle a Nissan Premera Saloon with dual registration numbers BM9180 and MP1843 which was being negligently driven at very high speed per police report **exhibit MK3**.
17. **THAT** my late husband tried to save his life by dashing from the road to take cover at the front of a stationary vehicle, but the said negligently driven vehicle hit the stationery vehicle at the back and forced it to roll forward, running over the chest of the deceased, thereby causing his death per the same police report **exhibit MK3** and per the death report **exhibit MK4**.
18. **THAT** the accident which resulted in the death of the deceased was wholly caused by the negligence of the driver of the said vehicle per the same **exhibit MK3**.
19. **THAT** the vehicle which caused the accident belonged to the Malawi Police Service and was at the time insured by the 1st Defendant per same **exhibit MK3**.
20. **THAT** the 2nd Defendant has not paid any death benefits since my late husband died.
21. **THAT** neither the 1st Defendant nor the 2nd Defendant has paid any compensation for the accident which caused the death of my late husband.
22. **THAT** I was wholly dependent upon my late husband and, as a consequence of his death I have lost all means of support.
23. **THAT** due to the death of my late husband, his life was considerably shortened and as such his estate has also suffered loss and damage.
24. **THAT** it is my humble prayer that the Defendants be found liable for causing the death of my late husband, Harrison Kalajira; be condemned to pay damages for loss of expectation of life and loss of dependency.

I MAKE THIS STATEMENT VERILY BELIEVING THE SAME TO BE TRUE TO THE BEST OF MY KNOWLEDGE AND IN ACCORDANCE WITH THE OATHS, AFFIRMATIONS AND DECLARATIONS ACT.

In her viva voce evidence, the Claimant told the court that she has three children, aged 17, 14 and 11 years old. The deceased person's parents are alive and are very old, aged 74 and 84 years old respectively.

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant's loss and the devaluation of the Kwacha would attract awards totalling K7,035,103.96 for loss of expectation of life, loss of dependency, and special damages.

Counsel for the Claimant cited comparable awards where the court awarded the sums of K1,500,000.00 and K1,800,000.00 as damages for loss of expectation of life. The awards were made in 2018. See; **Anne Chilanga (suing on behalf of the beneficiaries of Friday Nyolopa (deceased)) v Duncan Nyalugwe and Prime Insurance Company Limited** Civil Cause Number 659 of 2011; and **Lastone Chidule (suing on his own behalf and on behalf of other dependants of Mphatso Chidule) v ESCOM Limited** Civil Cause Number 947 of 2015.

On loss of dependency, Counsel for the Claimant based his computations on the multiplier and multiplicand approach. Counsel for the Claimant submits that the deceased's net salary of K14,411.10 be the multiplicand as per the payslip exhibited as MK2. Counsel submits that the deceased would have lived up to at least 35 years and this should be the multiplier. Counsel made the following computations:

K14,411.10 x 12 x 35 x 2/3

=K4,035,103.96

SUBMISSIONS BY COUNSEL FOR THE DEFENDANT

There were no submissions filed by the Defendants.

ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant's pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.¹

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd*³ by stating: '*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*'

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*⁴, the Supreme Court states: "*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*" In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁵ the Court states: "*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*" In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: '*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.*'

¹ See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

² *British Commission v Gourley* (1956) AC 185.

³ *West v Shepherd* (1964) AC 326 at 346.

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

COMPENSATION

Loss of Expectation of Life

Damages under this head are claimable by a Claimant where injuries suffered by him have reduced his expectation of life - *Flint v Lovell* [1935] 1 KB 354. The claim for damages under this head also survives the demise of the injured plaintiff and is thus available to the personal representative 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. No regard must be had to the financial losses or gains during the period of which the victim has been deprived, as these damages are in respect of loss of life, and not of future pecuniary loss - *Bentham v Gambling* [1941] AC 157.

In determining what damages to award the Claimant for loss of expectation of life, current awards are considered in order to determine an appropriate amount of compensation. Counsel for the Claimant cited awards of K1,500,000.00, and K1,800,000.00 as damages for loss of expectation of life made in 2018 (see citations above). Counsel submits that a total sum of K3,000,000 is however appropriate for the Claimant.

Taking into account the amount of time that has passed since the accident occurred (2011) and now as well as, the time that has elapsed since the awards cited by Counsel were made, this court believes an adequate award for the Claimant would be **K3,000,000.000 as damages for loss of expectation of life.**

Loss of Dependency

For damages under this head, the basic rule is that they are to be calculated in reference to a 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. There is no need for the dependant 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 dependant was receiving pecuniary benefit at the time of the death, a purely prospective loss being sufficient. Thus, a dependant parent might not have reached an age of 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.

In calculating damages for loss of dependency, the courts use the multiplicand and the multiplier method. The multiplicand is a figure representing the annual value of the dependency, and the multiplier is an approximated number of years over which such dependency is deemed to continue. The assessment is divided into two stages: firstly, the period between the date of death and the date of the trial and, secondly, the period following the trial. In arriving at the proper multiplicand, the calculations are made on the assumption that the deceased would have spent one-third of his income for personal expenses. The product of the multiplicand and the multiplier (starting figure) is scaled up or down, after taking into account the relevant considerations. The method adopted by the courts in determining the starting figure is to keep the multiplicand intact and either decrease or increase the multiplier. *Mbila et al v Attorney General et al* [1993] 16(1) MLR 283, *Banda and Chibuku Products Ltd v Chunga* [1987-89] 12 MLR 283 and *Thindwa v Attorney General et al* [1995] 1 MLR 336.

There are basically two considerations for which the courts decrease the multiplier. The first consideration is that a lump sum is being given and that it is, therefore, likely to be invested. The second consideration is that contingencies might have arisen to cut off the benefit prematurely. Suffice to say, for now, the most important of the contingencies are to do with death and marriage. Conversely the multiplier may be

increased over the years. It should be noted that where the deceased's income was ascertainable, the award for loss of dependency would be equal to the annuity lost for the period of the deceased person's expected employment had he been alive. However, when there is no evidence as to how much the deceased was earning, the court awards something equivalent to what a domestic worker earns – *Mbila et al v Attorney General et al* [1993] 16(1) MLR 283, *Thindwa v Attorney General et al* [1995] 1 MLR 336 and *Kenson Shapu v NICO General Insurance Company Limited* Civil Cause Number 222 of 2007.

The deceased herein was aged 29 years. He was a Traffic Police Officer who left behind a wife, three children and 2 elderly parents, all of whom were dependent on him. The deceased died on 16th October 2009 and made K14,411.10 as exhibited in MK2. The court adopts this sum as the multiplicand.

In terms of the multiplier, existing case authorities state that life expectancy in this country is in the region of 45-50 years – *Emma Sitenala Piyano v Geoffrey Chipungu and Prime Insurance Company Limited* Civil Cause No 1254 of 2001. Statistics released in 2011 from UNDP pegged life expectancy in Malawi at 52 years. The more recent case of *Lucy Chitsotso Chatayika v Emmanuel Kaludzu and United General Insurance Co. Limited* Civil Cause Number 1146 of 2016 (unreported) pegged life expectancy at 61.2 years.

The deceased was a police officer who took care of his family and might not have attained the age of 61.2 years despite the accident. A simple subtraction of the deceased's age from the life expectancy (see *Fatima Jackson v Evans Elias and Prime Insurance Co Ltd* Civil Cause Number 618 of 2013 (unreported)) would give us a multiplier of 32.2. Counsel for the Claimant suggested a multiplier of 35, but the arithmetic does not support this. This court will therefore use 32.2 as a multiplier based on the simple arithmetic done.

Herewith the computations:

$$\begin{aligned} &= (\text{K}14,411.10 \text{ (per month)} \times 12) \times (32.2 \text{ (multiplier)} - 1/3) \\ &= \text{K}172933.20 \text{ (annual salary)} \times (32.2 - 10.7) \\ &= \text{K}172933.20 \times 21.5 \\ &= \underline{\underline{\text{K}3,718,063.80}} \end{aligned}$$

Special Damages

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - *Stros Bucks Aktie Bolag v Hutchinson* (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – *McGregor on Damages* p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - *Govati v Manica Freight Services (Mal) Limited* [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516.

The Claimant herein was awarded damages the sum of MK5,000.00 as special damages for the cost of obtaining the police report. Through submissions, Counsel for the Claimant submitted that the claimant be awarded the sum of K76,000.00 being the cost of replacement of the damaged bicycle, cost of medical reports, police report and death report. As stated above, special damages ought to be specifically claimed and proven. The Claimant herein failed to do either. For these reasons, no award will be made under this head.

DISPOSAL

Summary

The Claimant is therefore awarded **K3, 000,000.00** for loss of expectation of life, **K3,718,063.80** for loss of dependency, K0 for special damages, and costs of the action (to be assessed by the Court).

Total award is **K6, 718,063.80** (six million, seven hundred and eighteen thousand, sixty-three kwacha, eighty tambala only)

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 16th day of October 2020 at the High Court sitting at Lilongwe.



C Mandala

ASSISTANT REGISTRAR