

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2173 OF 1997**

BETWEEN:

JOYCE NJOLOMOLE1ST PLAINTIFF

**JOYCE NJOLOMLE FOR AND ON BEHALF OF SOPHIA
NJOLOMOLE (DECEASED).....2ND PLAINTIFF**

AND

M J BANDADEFENDANT

CORAM: TEMBO, ASSSITANT REGISTRAR

Msiska, Counsel for the Plaintiff.

Ngwira, Counsel for the Defendant

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages. The assessment of damages is done pursuant to a consent judgment in favour of the plaintiff for damages for personal injuries suffered by both plaintiffs. The 1st plaintiff and her child the 2nd plaintiff were hit by the defendant's motor vehicle.

The 1st plaintiff suffered abrasions of the right upper arm. That is the evidence of the plaintiff's injuries as per her own medical report. The medical report does not confirm

the rest of the injuries the 1st plaintiff alleged she had suffered in the accident herein. The rest of the alleged injuries alleged to have been suffered by the 1st plaintiff are therefore disregarded in view of the medical evidence. As a result of her injuries on the arm the 1st plaintiff still feels pain. She had to be admitted in hospital for treatment for a period of 3 months. In the same accident the 1st plaintiff's child of 6 years of age died. It is clear herein that the plaintiffs are entitled to damages for personal injuries. And thus damages for pain and suffering in relation to the 1st plaintiff and damages for loss of expectation of life with regard to the 2nd plaintiff's estate.

Such damages are awarded to compensate the plaintiff for injuries suffered due to the defendants' negligence. See **Livingstone v Rawyards Coal Company (1880)** A. C 25. Such damages are not capable of quantification in money terms with mathematical precision. As a result courts use decided cases of comparable nature as a guide in arriving at appropriate awards in each particular case. That ensures some general degree of uniformity and consistency in civil justice. See **Wright v. British Railways Board (1983)** 2 A.C 773. This court further notes that to achieve justice it has to consider the facts in each particular case and avoid sticking to consistency in awards at the expense of justice being done to the parties. See **Heil v. Rankin** [2000] 2 W L R 1173 at 1186 per Lord Woolf M. R.

This court has considered the 1st plaintiff's injuries. She must have suffered a lot of pain from those injuries as well as from the treatment of the same. This court has considered awards in recent cases in which plaintiff's suffered similar injuries. One such case is that of **Mpeketula and another v. Kiwi Brands Ltd and Prime Insurance Company Ltd** Civil Cause Number 2420 of 2002.

The 2nd plaintiff in that case had been hit by the 1st defendant's motor vehicle. Consequently the 2nd plaintiff violently landed on the tarmac suffering a dislocated right knee, a cut on the right hand and bruises on the right shoulder. A sum of K80,000.00 was awarded to that 2nd plaintiff as damages for pain and suffering and loss of amenities of life. It is noted that the injuries suffered by the 1st plaintiff herein are comparable to the ones suffered by the 2nd plaintiff in the Mpeketula case above. But the award in the Mpeketula case was made in December, 2002. Since then the value of the Kwacha has fluctuated downwards. In the circumstances of the present case this court is of the view that a fair award to the 1st plaintiff be K70,000.00. The sum of K70,000.00 is therefore awarded to the 1st plaintiff as damages for pain and suffering. With regard to the 2nd plaintiff's claim for loss of expectation of life this court notes that such a claim is maintainable on behalf of her estate. See **Rose v Ford (1937)** A. C 826. The award of damages in such cases is conventional. This is because it is impossible to quantify loss of expectation of life with mathematical precision. See **Cain v. Wilcock** [1968] All ER

817.

The courts therefore draw guidance on level of awards in such cases from decided cases of comparable nature. This court has considered recent awards on loss of expectation of life including the one made in the case of **Mpuche v. Kwanyasa** Civil Cause number 2627 of 2002 made in April, 2003. In that case a sum of K70,000.00 was awarded as damages for loss of expectation of life on the demise of a 14 year old.

In the instant case the deceased 2nd plaintiff died a lot younger and the kwacha has lost some value since the award alluded to above. In the circumstances the sum of K150,000.00 is awarded to the 2nd plaintiff's estate for loss of expectation of life.

Costs are for the wholly successful plaintiffs.

Made in **CHAMBERS** at Blantyre this April, 2004.

M A Tembo

ASSISTANT REGISTRAR