

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**

CIVIL CAUSE NO. 3310 OF 1999

BETWEEN:

FLORENCE L NGUWENI on her own behalf and on behalf
Of GRACE MAMBALA (deceased) and other dependants PLAINTIFF

THE ATTORNEY GENERALDEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Movette, Counsel for the plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages for loss of expectation of life and loss of dependency of the plaintiff on her deceased mother Grace Mambala. The deceased died in a road accident caused by a government vehicle MG 172R.

A default judgment for the damages alluded to above was entered in favour of the plaintiff dated 7th February, 2004. The deceased herein died aged 58 years on 6th May, 1996. She was survived by the plaintiff her daughter aged 32 years at that time and her son Charles aged 28 years at the time of the demise of the deceased.

The deceased's monthly income is uncertain but she was getting income from several sources. She was a ward councilor and a grocer. Counsel appeared not to have

endeavored to help her client get evidence in that regard. This results in injustice, and great difficulty in assessing damages due. The manner of pleading herein also leaves a lot to be desired. There are no particulars of negligence alleged although a default judgment was subsequently entered. The names of the deceased's dependants were also not spelt out in the pleadings. There is no full statement of claim. This is a serious lapse of attention to pleadings by Counsel. Whatever the case this court shall first deal with the claim for loss of expectation of life. The starting point has been the average life expectancy of Malawians as indicated by the National Statistical office. This average life expectancy was recently pegged below 50 years. This presents an obvious difficulty the plaintiff having been aged over 50 years namely 58 years. This is one manifest problem with statistics. This court is in spite of this, of the view that the deceased herein should be given the allowance due to her in terms of her life expectancy herein which is clearly above the average. The deceased appeared to have been enjoying a good health from the fact that at the time of her death she was still able to tend to her garden. She was involved in local government administration and in a grocery business.. This court is of the view that the deceased might have lived for some more years. The deceased also appears to have had a predominantly happy life as can be seen from the activities she was engaged in. This is a predominant factor to be considered on assessment of damages for loss of expectation of life. See Viscount Simon L.C in **Benham v Gambling** [1941] A.C. 157. Clearly the plaintiff herein is entitled to damages for loss of expectation of life in the present action. See **Rose v. Ford** [1937] A.C.

And so this court awards the plaintiff the sum of K100,000.00 as damages for loss of expectation of life upon considering the circumstances outlined above. And now this court turns to deal with the plaintiffs claim for loss of dependency.

In arriving at damages for loss of dependency this court uses what can be termed the multiplicand and multiplier formula. See **Mallet v. McMonagle** [1970] A.C. 166. The multiplicand being the deceased's monthly income whereas the multiplier is the deceased's approximated number of years she would have live were it for the wrongful death. The multiplicand is multiplied by the multiplier and the figure of 12 representing the number of months in a year and personal reducing the product by $\frac{1}{3}$ to representing personal expenditure by the deceased. The monthly income of the deceased was not specifically spelt out in evidence. That is an obvious difficulty. But this court is of the view that from the deceased's activities she must at least have earned a minimum monthly income equivalent to that of a domestic worker as provided by the Minimum Wages Regulations under the Employment Act. That is not less than K1,500.00. This court shall in the circumstances of the present case adopt that sum as the multiplicand.

For the multiplier, having due regard to the deceased's age and all the surrounding circumstances of her life this court adopts a multiplier of 5.

And the level of dependency therefore works out as follows:

K1,500 x 12 x 5 x $\frac{2}{3}$, which comes up to K60,000.00. This sum awarded to the plaintiff as damages for loss of dependency. The total award herein is therefore K160,000.00

The dependants of the deceased Florence and Charles shall each get K80,000.00.

Costs are for the plaintiffs.

Made in Chambers at Blantyre this June, 2004

M A Tembo

ASSISTANT REGISTRAR