



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 647 OF 2012

Between

CHRISSY VILILI (Suing on her own behalf and on behalf of the beneficiaries of the Estate of CATHERINE VILILI..... CLAIMANT

-and-

PRIME INSURANCE COMPANY LIMITED..... DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Mr. Kamangira, for the Claimant

Mr. Tandwe, for the Defendant

Ms. M. Galafa, Clerk/ Official Interpreter

Banda, A.R

ASSESSMENT ORDER

1. Background

The claimant obtained judgment on liability in her claims for damages for loss of dependency and loss of expectation of life against the defendant. The honourable Justice Kenyatta Nyirenda, in his judgment of 22nd May, 2017, directed that assessment of damages be dealt with by the registrar. This is the order after that assessment hearing held on 17th May, 2018.

2. Evidence

The claimant told the court that her mother, Catherine Vilili was a business lady who travelled around in the course of her business. She said that on 17th March, 2012, she boarded the defendant's insured vehicle a Dyna Pick Up at Liwonde going to Ntaja. The vehicle was driven negligently and it overturned whereby the claimant's mother sustained head injuries that eventually led to her death. The claimant further said that her mother was 55 years old at the time of her death, and she was survived by herself,

and her siblings Joyce, William, James, Silvia, Mc Donald, Violet, Chisomo, Esther and Upile who the claimant said were dependent on her.

The claimant said that the dependents were finding it difficult to maintain themselves. She tendered both police and death reports. She said that she spent K6,000.00 for the procurement of the police and death report.

3. Issue

The rightful quantum of damages to be paid to the claimant for loss of life expectancy and loss of dependency.

4. Analysis of Fact and Law

Damages are paid as a matter of compensation in torts, for a wrong done to the receiving party, by the party that is responsible for the wrong. The principle is that as far as money can do, the claimant should be put in the same position as he could have been if the wrong was not done, for which he is receiving compensation. It is acknowledged that loss that is not in monetary terms cannot perfectly be ascertained with mathematical precision, as such the damages to be paid in monetary terms must be reasonable compensation. To achieve a reasonable degree of certainty, courts have recourse to decided cases for guidance.

4.1. Loss of Expectation of Life

Awards for claims of loss of expectation of life takes into account the number of years a deceased person was expected to live without necessarily attaching value to the years but that the claimant enjoyed a predominantly happy life. Generally, courts consider the country's life expectancy when making such an award- Samuel Chawanda v. Attorney General Civil Cause No. 3556 of 2002 High Court, Principal Registry (unreported). The court also factors in life's ups and downs. It is a fact of life that misfortunes abound in the human realm that lessens a person's natural length of life- Aaron Amosi and Another v. Prime Insurance Company Limited, Personal Injury Cause no. 133 of 2013, High Court, Principal Registry.

I have looked at a plethora of cases on this head. The damages are ranging between K900,000.00 and K1, 800,000.00. For instance, in the case of Masauko Ephraim (suing on his own behalf and on behalf of other dependents of the estate of Shadreck Banda, Deceased) v. Prime Insurance Company Limited, Personal Injury Cause Number 658 of 2012, K900,000.00 was awarded as damages for loss of expectation of life. In the case of Esther Kassim (suing on behalf of the estate of Losani Willy, deceased) v Stanley Dimusa and Prime Insurance Company Limited Personal Injuries Cause Number 56 of 2015; an award of K1, 200,000.00 was made. In Anne Chilanga (suing on behalf of the beneficiary of Friday Nyopola (deceased) v Duncan Nyalugwe and

Prime Insurance Company Limited personal Injury Cause . Number 659 of 2011 an award of K1, 500,000.00 was made as damages under this head. In the case where a boy had his life wrongfully terminated at a tender age of 12, the court awarded K1, 800,000.00- Lastone Chidule (suing on his own behalf and on behalf of other dependants of Mphatso Chidule) v. ESCOM Limited Personal Injury Cause No. 947 of 2015. This award was made in May, 2018. In that regard, I award the claimant **K 1, 500,000.00** in this matter, as damages for loss of life expectancy.

4.2.Loss of Dependency

Courts use a multiplicand and multiplier formula to come up with an award for loss of dependency. The multiplicand is the figure representing the deceased's monthly earnings which is also multiplied by the figure 12, being the number of months in a year. The multiplier is an estimated number of years the deceased would have lived if it were not for a wrongful death- Samuel Chawanda v. Attorney General (supra). In the instant matter, the court was not given evidence on the deceased's monthly earnings, perhaps understandably, as she was occupied in a business that had no ascertained periodic earnings. Counsel for the claimant submitted that in a case such as this one where the monthly earning is not known, the court should use the earning of a domestic worker. He cited the case of Kenson Shapu v. NICO General Insurance Company Limited, Civil Cause No. 222 of 2007, as authority.

The deceased died at the age of 55. Life expectancy in Malawi in the year 2012 when she died was 54.8 according to UNICEF statistics. She had defied the life expectancy. In the case of Mbila and Another v. Attorney General and Another [1993] 16(1) MLR 313, the court used the retirement age of a civil servant to come up with a multiplier. In this case, the deceased was not in an employment with a definite retirement age. It is a known fact however that she would have lived on if not for the wrongful death. She would have been productive and earn for the benefit of her dependants to some age to retire from being a benefactor- this being a fact of life. It is generally accepted as the civil service retirement age is indicative that at the age of 60 a person's production slows down. I will thus use 60 years to come up with the multiplier; which entails the deceased would have lived and earned on 5 more years.

Domestic workers cannot be paid below the minimum wage by law. The current minimum wage that took effect on 1st July, 2017, as revised by the Minister of Labour under section 54 of the Employment Act is K962.00 per day. Normally domestic workers work 6 days a week and there are four weeks a month. I will round off the minimum monthly wage at K25, 000.00. Two thirds of that monthly earning is what the law assumes that was used on dependants. The formula for quantifying damages for loss of dependency in this case is therefore; two thirds of K25,000 per month times 12 months for a year times 5, for the 5 years that were left of dependency. The figure is **K1,000,050.00**.

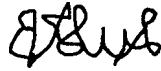


The claimant should also recover **K6,000.00** being total combined cost of procuring a police report and death certificate.

5. Conclusion

The claimant is awarded K1, 500,000.00 damages for loss of life expectancy, and K1, 000,050.00 damages for loss of dependency and K6, 000.00 special damages. The total sum of K2, 506,050.00 should be paid within 14 days from the date of the order. The defendant should also pay the claimant's costs of the assessment hearing.

Made this 20th day of June, 2018.



Austin Jesse Banda

ASSISTANT REGISTRAR