



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 611 OF 2017

BETWEEN

TAMARA SIBALE (Suing on her behalf and on behalf

of the dependants of Patrick Sibale(deceased).....1st CLAIMANT

BONGANI SIBALE.....2nd CLAIMANT

AND

JOHN LAMECK.....1ST DEFENDANT

JEFULE DAISON t/a MALUNGA TRANSPORT.....2ND DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....3rd DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (AR)**

Kalua- of Counsel for the plaintiff

Tandwe- of Counsel for the defendant

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Through a writ of summons that was issued by the court on the 12th of December 2017, the claimant commenced these proceedings claiming damages for pain and suffering, loss of amenities of life, special damages and costs of this action. This is the court's order on assessment of damages pursuant to a

judgment by Honourable Justice Potani entered in favour of the claimant on the 22nd of June 2018. The issue of the Defendant's liability having been settled by the said judgment, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the Plaintiffs for the losses and damages herein.

The parties appeared before this court on assessment of damages on the 23rd of August 2018. The 1st claimant adopted her witness statement in which she averred that on the material day she was a passenger in a vehicle registration number RU922 Toyota Sienta being driven by her husband Patrick Sibale. They were travelling from Blantyre going to Mpherembe to attend a funeral. Upon arrival at Yosefe Village at Kasungu the motor vehicle they were travelling in collided with a motor vehicle registration number CK Isuzu KB which was coming from the opposite direction as it overtook another vehicle. As a result of the accident, her husband died on the spot due to head injuries that he sustained. She sustained soft tissue injuries and was taken to Kalululma Health Centre for treatment and was transferred to Kasungu District Hospital. Her daughter Bongani Sibale sustained soft tissue injuries. The motor vehicle RU922 was extensively damaged and uneconomic to repair. She further stated that prior to the deceased's death her husband was self-employed. He was doing a business of metal fabrication. At his time of death he had a contract with Mount Meru. He died at the age of 42 years. He was providing for his family materially and financially. She exhibits medical reports marked "TS2" and "TS3". She also tendered a death marked "TS4".

In her *viva voce* evidence she added that the vehicle was bought in the year 2016 and was valued at K2,500,000.00. It was later sold at K300,000.00 as it was beyond repair. She is now claiming K2,200,000.00 for its replacement. The owner of the vehicle was her late husband. In cross-examination, she stated that she works as a Sales Representative at Megabytes Office Solutions and gets K80,000.00 per month. She stated that Bongani was the only child the deceased had. She stated that she bought the vehicle while it was new but they bought from someone. She stated that there was a sale agreement but did not bring it. She stated that her husband was self-employed and travelled from Blantyre to Lilongwe at-least weekly. She added that the vehicle was used quite extensively by the family. She added that she did not consider wear and rear as the vehicle still looked new.

With this evidence, the claimants closed their case. The defendants on the other hand, opted not to parade witnesses but asked for 14 days to file written submissions. Unfortunately, the submissions were not filed by the specified date. Counsel for the claimant adopted his Skeletal Argument as his final written submissions and to file supplementary submissions in view of the evidence that had been proffered.

With that, I must state that the law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of *Livingstone v. Rawyards Coal Company* (1880) 4 AC 25 in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in such matters with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C. 773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the claimants.

In the present matter, Counsel for the claimant is proposing that with regard to Tamara Sibale and Bongani Sibale this court should consider making an award of K1,800,000.00 each as damages for pain and suffering and loss of amenities. It is stated that both sustained soft tissue injuries. Counsel for the claimant cites the following cases:

Rosemary Malemya v Prime Insurance Company Limited Civil Cause No. 3745 of 2015 in which the claimant sustained a dislocation of the left knee joint and lacerations on the right hand. The court awarded the sum of K1,600,000.00. The award was made on 11 March 2016.

Patrick Petro v Prime Insurance Company Limited Personal Injury Cause Number 1413 of 2015, in which the claimant sustained a dislocation of the left knee joint and lacerations on the right hand. The court awarded the sum of K1,600,000.00 for pain and suffering and loss of amenities of life. The award was made on 11 March 2016.

Peter Katemba v Charter Insurance Company Limited Personal Injury Cause Number 1413 of 2015, in which the claimant suffered bruised knee, dislocation of the left arm, painful ribs and hips. An award of K1,700,000.00 for pain and suffering and loss of amenities was made on 18 January 2017.

I must disclose that I found it hard to make awards for the two claimants in this matter owing to the fact that the soft tissue injuries alluded to are not particularized. It is not stated whether the injuries were bruises or cuts. This made it hard to decipher the intensity of the injuries in the circumstances nor to match with the cases cited for a semblance of similarity. Notably, some of the cases that have been cited indicate dislocations and bruises leaving the court wondering how they are comparable with the case herein. On this regard, I shall make an award of K1,000,000.00 each.

On the claim for loss of expectation of life and loss of dependency in view of the death of the 1st claimant's husband consequent to the accident herein, it is trite law that once a person dies as a result of the negligence of another, the dependants or relations of the deceased are entitled to compensation from the tortfeasor. The award to be made as damages is arrived at using the same principles that apply in claims for personal injuries. To arrive at such damages, reference is made to cases of comparable nature.

In the present case, under damages for loss of expectation of life, Counsel for the plaintiff cited the case of **Annie Chilinga (suing for and on behalf of the beneficiaries of the estate of Friday Nyopola) V Prime Insurance Company Limited**, Personal Injury Cause no. 659 of 2011, in which the court awarded the sum of K1,500,000.00 as damages for loss of expectation of life. The award was made on 7th June 2016. Counsel therefore proposes a sum of K2,000,000.00 under this head. He further cites the case of **Malingaliro Elia & Others v Paramount Electrica Engineering Co. Ltd** Personal Injury Cause Number 215 of 2017 where an award of K2,000,000.00 was made under this head on the 14th of August 2018. I shall make an award of K2,000,000.00 as damages for loss of expectation of life in the circumstances of the instant case.

Under loss of dependency, the court has taken note of the cases **Mbila and another v Attorney General** 16[1] MLR 313 and also **Banda and Chibuku Products Ltd v Chunga** 12 MLR 283 on how damages for loss of dependency are calculated. It is trite law that in this head of damages, courts have developed a formula which is conveniently referred to as the "Multiplicand and Multiplier". The multiplicand is the figure representing the estimated number of years the deceased would have lived if not for the wrongful death. 12, representing the number of months in a year, is multiplied by the product of the multiplicand and the multiplier and recent judicial pronouncements have pegged life expectance at 57 years. Whatever the product is reduced by one third representing a portion presumably used by the deceased on purely personal needs. See also **Kundwe v Stagecoach Malawi Limited**, 16[2] MLR 556.

Counsel for the plaintiff contends that the deceased in the present case died at the age of 43 years and with the life expectancy pegged at 58 according to recent judicial pronouncements, the court should adopt a multiplier of 12. This court finds it proper that it adopts the multiplier of 10. Therefore using the multiplier/multiplicand formula loss of dependency would, thus, be:

$$(MK28,860.50 \times 10 \times 12 \times 2/3) = \mathbf{K2,308,800.00}$$

In summary, the claimant are awarded as follows:

Loss of expectation of life - K2, 000, 000.00

Loss of dependency - K2, 308, 800.00

In total, the claimant are awarded **K4, 308, 800.00**.

Finally, the claimants also claim for damages for replacement of the motor vehicle which was involved in the accident in the present matter. The position of law is that where an item has been damaged and is in a reparable state, the court will award as damages the cost of repairing the same. On the other hand, where the item is beyond repair, the court will award as damages, the cost of replacing the item, see **Hara vs Malawi Housing Corporation, 16(2) MLR 527** and **Tea Brokers (Central Africa) Ltd vs Bhagat (1994) MLR, 339**. In the present case, the evidence which is not in dispute shows that the motor vehicle was in an irreparable state and the court is therefore obliged to award as damages, the cost of replacing it.

The claimant told the court that the same was bought at K2,500,000.00. However, she did not produce the sell agreement. According to her, it could be among the documents left by her late husband. The defendants seemed to have taken issue with the same judging from the line of questions that ensued thereafter. The question therefore that this court must answer is whether it should accept the value as presented by the 1st claimant without documentary evidence. Counsel for the claimant, through supplementary submissions, brought to the attention of the court several cases on this regard. For the sake of brevity, this court chose to refer to one case which is the case of **Knight Frank and Blantyre Synod v Steven Aipira Achaje t/a Mvumba Investments MSCA Civil Appeal Number 38 of 2000** in which it was stated:

... does it mean that a claimant must always produce receipts or other documentary evidence in support of his case, as was contended by Counsel for the Appellants in the present case? Again, we would answer this question in the negative. We accept that such receipts would proffer the best evidence, but there is no rule of law which requires a party to adduce such evidence, best evidence that is, in order to prove a civil case. In our judgment, it is principally a question of whether the claimant's evidence, even if only oral, it is believed by the court.

Indeed, I thought where the credibility of a witness has not been impeached, the court should be in a position to accept his or her assertions. In this case, the 1st claimant seemed credible enough. She even

undertook to bring the documents given an opportunity. All in all, there was nothing in her testimony that presented itself as an exaggeration. I accept her claim of K2,200,000.00. Nevertheless, the court takes note that the 1st claimant readily admitted that the vehicle had been used extensively by her late husband albeit still being in a good condition. In my view, wear and tear must have crept in somehow. This court ought to consider the depreciation. I therefore award the claimants K2,000,000.00 as cost of replacing the motor vehicle herein.

In summary, therefore, the courts awards the damages as follows:

- K1,000,000.00 being damages for pain and suffering and loss of amenities for Tamara Sibale;
- K1,000,000.00 being damages for pain and suffering and loss of amenities for Bongani Sibale;
- K4, 308, 800.00 being damages for loss of expectation of life and loss of dependency;
- K2,000,000.00 being the cost of repairing the motor vehicle and
- K3,000.00 being cost of procuring a Police Report.

In total, the claimant is awarded K8,311,800.00. They are further awarded costs for the assessment proceedings.

DELIVERED IN CHAMBERS THIS 13th DAY OF SEPTEMBER 2018


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR