

Death

"The dependants of a person wrongfully unlawfully killed are entitled to claim compensation from the wrong doer for the pecuniary loss actually sustained (by them) in consequence of the death, but in assessing the damage regard must be had to the maintenance which the deceased had been able and accustomed, by his labour, to furnish to his wife and children or other relatives." These principles which were laid down in Worcester vs Union Government, 1911, A.D. were adopted by the Native Appeal Court (Cape & P.T.S. Division) in Ntolyaloza Makova vs Ngobele Butkwa, 1937 N.A.C.(C50) and in Mgolokelwa & 4 others vs Makayciana Blai, 1934 N.A.C.(C50) in which it was pointed out that it is necessary for the widow to prove calculable pecuniary loss before she could recover damages for the killing of her husband. The Plaintiff was the widow of a man with whom she had entered into a matrimonial union. On the right of the order to sue see ad. Vukubis brother vs Mgolokelwa & others 4 N.A.C. 32. Ngobele vs Shole, 1893 S.C.; Kanyile vs Kibye 1939 N.A.C.(P.S.N.)

The problem of deciding upon a satisfactory basis for the calculation of the damages to be awarded in native cases of this kind has been not easy to solve. As was pointed out in Mbawuli Ngqongo & 8 others vs Keteini Gqutenza, 1938 N.A.C.(C50):— "There have been several cases before this court of a similar nature & in every one of them it has been found that the dependants have been unable to prove any pecuniary loss. In the circumstances and under the conditions in which the generality of natives live, there is no basis on which to assess damages, much as is possible in the case of Europeans who usually have a more or less fixed income. The very large majority of natives have no regular income and subsist mainly from the produce of their lands & also from earnings on the mines at irregular intervals. In the event of the death of the breadwinner through negligence or malice his lands are cultivated by some other member of the family.

so that no loss occurs to the dependents on that account. Even where a man has been in the habit of going to the mines this has only been, probably, at irregular intervals & it is impossible to say whether or when he would go again."

"Even when he did send money down, it was used for the family generally & it is difficult to estimate with any degree of accuracy how much was spent on the person actually dependent upon him. Enough has been said to show the hardship under which the dependents of a native labourer in trying to prove material loss".

"That they do suffer some loss cannot be questioned, but how to prove it is the almost most insuperable difficulty".

It is thought that the matter might be brought to the notice of the Legislature with a view to steps being taken towards ameliorating the position."

On the other hand in Matabele Meanywa vs Bambara Volovane & others, the Court quoted with approval the principle laid down by the Appellate Division in "Dostbhujan vs Stanley (1928 A.D. 322) that "the uncertainty of the amount and the period of the future contribution does not entitle the Court to refuse to assess any damage". The Court was "bound to assess damages as best it could on the evidence before it and would not order abrogation from the instance" (Arends vs Blaber P.H. 1926 (2) J. 27).

In Meanywa's case the Court, following Hullay vs Cox 1923 A.D. 250 summarised the principles which should guide it in calculating the amount of damages as follows: (a) The object of awarding to the dependents of a deceased who has been killed owing to the negligence of another is to compensate them for material loss, not to improve their material prospects, (b) in the assessing of such damages due allowance should be made for such factors as possibility of remarriage of the widow or the marriage of the daughters, the fact that children may become self-supporting the existence of insurance policies on the life of the deceased,

the deceased's expectation of life, the state of his health and how long he would be able to work at his full power and any other factors that would have affected his earning capacity."

In applying these principles to the case in point in which the widow claimed

- (1) Doctor Expenses : £1
- (2) Funeral Expenses : £2
- (3) Compensation for loss of support, maintenance & assistance : £102

the Court said

"Evidence must be led of the age of the deceased and the state of his health for undertaking such remunerative employment as he was in the habit of performing, and his average monthly or yearly income over a period when such person is not regularly employed. It is doubtful whether a laborer living in a reserve & doing odd jobs at his trade earns his own living.

Then evidence will be required of the age & state of health of the plaintiff. It is obvious that a woman of 50 years of age with seven children, but in good health, is entitled to a larger amount by way of compensation than a woman of 20 years of age with every prospect of re-marriage, two children to tie her to her home. With such evidence the Court should be in the majority of cases, be able to assess the sum. The calculation of the share of the income of the deceased devoted to the plaintiff must, from the very nature of things, always be a difficult matter. Households accounts are seldom kept with such meticulous care that it is possible, ^{to ascertain} with any degree of accuracy certainty the amount spent on each member of the household, but Courts must face up to the difficulty and make an estimate having regard to the number & ages of persons in the household dependent upon the deceased; whether any of them contributed to their own maintenance, and, in so far as children are concerned, whether or not they attend school. Having arrived at the amount of the income devoted to the plaintiff the Court will be in a position to estimate the sum suffered after having made all necessary deductions.

Applying this method of calculation, the majority of the Court came to the conclusion that the plaintiff should be awarded £48 a total of £45 made up as follows: General Damages £42, Doctor's Expenses £1, Funeral Expenses £2.

The evidence showed that "deceased had been married to the plaintiff for about 20 years. There was a family of seven children & the widow at his death. Four of the children are minors & were supported by the deceased. Apart from the ordinary amenities of rural life, there is unrefuted evidence that the deceased earned a sum of £3 per month for each twelve months every 2 years, most of which was sent home for the maintenance of the plaintiff & the minor children, for the purchase of food, clothes, school books & other requirements. It is common cause that the husband of the appellant was 50 years of age at death. There is no doubt that the deceased, had he lived, would have been in a physical condition to support his family from his earnings for at least seven years. It can be assumed that during this seven years the deceased would have earned an average of £1/- per month or £42 in all.

It was admittedly difficult to arrive at an equitable assessment of pecuniary loss suffered by each defendant but following the decision in Kwedeni Kanyile vs Ngogo Lubye, 1939 NAC (T.O.N) 27, I feel it is better to fix an arbitrary amount rather than to apportion the loss to each of the defendants.