

CIV/T/236/95

IN THE HIGH COURT OF LESOTHO

In the matter between:

'MAMOHLOTSANE FRANCINA MOHLOTSANE

Plaintiff

and

**THE MINISTER OF HOME AFFAIRS
THE COMMISSIONER OF POLICE
THE ATTORNEY GENERAL**

*First Defendant
Second Defendant
Third Defendant*

RULING

For Plaintiff : Mr. Mahlakeng

For Defendants : Mr. Masoabi

**Delivered by the Honourable Mr. Justice T. Monapathi
on the 13th September 2000**

My approach will be to make a ruling and that full reasons will follow:-

I am convinced that probabilities favour the Plaintiff's case and the granting of some damages although not the whole that has been claimed.

The case of the Defendant was somewhat indefensible one in which strictly speaking there could not be said to have had a good defence and there appeared to be no denial to the said question of shooting by the Defendant's witness Lerato Mofubelu.

There also seemed to be no denial or good answer to the circumstances which the Plaintiff's witness testified to in the description by the evidence of the Plaintiff witness PW1 Tankiso Challa. There could not have been a specific cause or defence of person or provocation in the circumstances surrounding and at the place at which deceased (Plaintiff's husband) was shot as the evidence of PW1 indicated in a clear manner.

The legal position as shown in the heads of argument and the facts elicited were equally correct and supportive of Plaintiff's case. I was persuaded that equally that probabilities favoured the award of the damages but not quite as claimed but substantially. That there will be damages on the two heads as explained in the further particulars.

I however in order to fix the estimate of the award asked Mr. Mahlakeng to make calculations and first to speak about the total in the first head which is the estimate income of the deceased. This I reduced by M250.00 per month. And that of the maintenance of children (in the

Second head) which I reduced by M100.00 per month. In the process I had estimated that the income of the deceased could be reasonable estimate of M500.00 for monthly income instead of M750.00. That was in the absence of direct proof which fortunately does not deny award of general damages. I would proceed to recognize the estimate as reasonable. So that that will bring about the total which is consistent with the reduced monthly income which has been reduced as aforesaid.

I would go about to decide award of funeral expenses, which are special damages, as being equal to the total shown by the two exhibits namely "A and B". The first amount was that of R6,889.00 and the second was that of R5,742.00. If there had been additional proof of other expenditure by way of receipts or otherwise I would have been reminded. As far as I am aware exhibits "A and B" were the only exhibits and only proof of special damages. In contrast with proof of general damages, special damages can only be proved directly in the manner of quotations, invoices and more particularly receipts of payment as in exhibits "A and B". I will award the total of the two exhibits which will add to the total award which I will make for special damages.

The total in respect of the first head (maintenance of plaintiff) will be M126,333.00. The second head for the first child will be M36,000.00 and for second child M62,500.00. The special damages will add to the total sum of M12,631.00. There will be an award for interest on the total of two same total at the rate of 8.25% per annum from the date of judgment.

There will be costs of suit awarded to Plaintiff.



T. MONAPATHI
JUDGE