



MALAWI JUDICIARY

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



PERSONAL INJURY CAUSE NUMBER 659 OF 2011

BETWEEN:

ANNIE CHILINGA suing for and on behalf of the Beneficiaries
of the estate of FRIDAY NYOPOLA

(Deceased)..... **PLAINTIFF**

AND

DUNCAN NYALUGWE..... **1st DEFENDANT**

PRIME INSURANCE COMPANY LIMITED..... **2nd DEFENDANT**

CORAM: N USIWA USIWA, DEPUTY REGISTRAR

Mr Malijani of Counsel for the Plaintiff

Mr Alide Counsel for the Defendant

Mr C Cossam..... Official Interpreter

ORDER ON ASSESSMENT OF DAMAGESP

This is an Order on Assessment of Damages.It follows a court judgment on liability dated 11th November, 2014. The court is now moved to determine and assess how much compensation is payable to the plaintiff.

BRIEF FACTS

The plaintiff is an adult female and brought this action on behalf of the beneficiaries of the estate of **FRIDAY NYOPOLA** (Deceased).



On or about the 14th September, 2009, the deceased then aged 36 was lawful walking on the nearside dirty verge at Chifundo undo near Mpemba along the Blantyre –Chikwawa Road when he was hit to death by a motor vehicle Toyota Hiace Mini-bus Registration Number BN 4268.

At the material time the said motor vehicle was driven by the 1st Defendant and insured by the 2nd Defendant.

The said accident and death were caused by the negligent driving of the 1st Defendant per this court judgment dated 11th November, 2014 and the 2nd Defendant is liable to pay compensation to the plaintiffs under the Road Traffic Act hence the present assessment.

ISSUES

The only issue at hand is how much compensation is payable to the plaintiffs.

LAW AND ASSESSMENT

The fundamental principle which underlies the whole law of damages, in whatever area they are awarded, is the principle of compensation. What this means is that the damages to be recovered must in money terms be more and no less than the plaintiff's actual loss. Of course the principle is no more than a platitude. The principle was laid down by Blackburn in the classic case of ***Livingstone vs Rawyards Coal Company(1880) 5A.C. 25***

A person who has suffered damage due to the negligence of another is entitled to recover damages. The aim of awarding damages is to compensate the injured party as nearly as possible as money can do: ***Livingstone vs. Raw yards Coal Company Supra.***

In the above case the court at p49 said:

'Where any injury is to be compensated by damages, is setting a sum of money to be given for damages, you should as nearly as possible get at that sum of money which will put the party who has been injured in the same position he would have been in if he had not sustained the injury for which he is now claiming compensation'

Viscount Dunedin in **Admiralty Commissioner v SS Susquelianna(1926) AC 655 at 661** it was stated that '..the common law says that the damages due to either for breach of contract or tort are damages which, so far as money can compensate will give the injured party reparation for the wrong act'

In **Zaina Chipala vs Dwangwa sugar corporation Civil cause Number 435 of 1998**, the late Honorable Justice Chimasula Phiri said:

'It is important to bear in mind that damages in personal injuries cannot give a perfect compensation in money terms, for physical injury and bodily injury, pain and suffering and loss of amenities cannot be calculated in terms of money'

It is not possible to quantify damages for pain, suffering and loss of amenities 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: '**Wright vs. British Railways Board(1983) 2A.C 773**,and **Kalinda vs. Attorney General (1992) 15 M.L.R.170at P172**.

QUANTA OF DAMAGES AND COSTS

Loss of expectation of life

As regards to the claim for loss of expectation of life the award for such loss is a conventional figure:**Cain vs Wilcock**

The approach to be followed is the same as that used in claims relating to personal injuries. The courts refer to cases of comparable nature in coming up with an award under this head since no mathematical formula is capable of quantifying in monetary terms loss of expectation of life:**Malita Mahikili vs Wilson Kandaya and Tennyson Mkwamba.**

In **Grace Chipeto vs Johnson Nyirenda and Prime Insurance Company Limited**, the court made an award of MK800,000.00 as damages for loss of life. An award made on the 26th July 2012.

In the case of **Chrissy Chidimu, Annie Kabweraa and William Thuthuli vs Attorney General**, Civil cause Number 832 the court on 7th August, 2012 made an award of MK600,000,00 for loss of life.

In the present case considering that the date the above award was made and value of the Kwacha has depreciated, I award **K1, 5000, 000, 00** which I think should be adequate and fair compensation for loss of expectation of life.

Loss of dependency

In a claim for loss of dependency the courts have followed the multiplicand and multiplier formula. The multiplicand being the figure representing the deceased's monthly earnings and the multiplier being the estimated number of years the deceased would have lived had it not been for the wrongful death.

In the case of *Chrissy v Chidimu civil cause Number 832 of 2011*, the court stated that for person no known earnings courts have used the minimum monthly wage for domestic workers applicable at the time of death. The minimum monthly wage for domestic workers was held in the above case to be MK15, 000.00.

Courts have reduced the award under this head by one third representing the portion the deceased would have expected purely on personal pursuits.

Case authorities have pegged life expectancy for a man in Malawi at 53 years.

The deceased herein was 36 years at the time of his death and had 17 more years of expected life.

Using the multiplicand /multiplier formula, the claim under this head would be K2, 040,000.00 worked out as follows:**17x12xK15, 000.00x2/3**. I also award this K2,040,000.00 to the Plaintiff.

Funeral Expenses

Jimmy Gongolo vs Attorney General used its discretion to award K15,000.00 for funeral expenses for some common transactions that are expected at funerals even though there are no receipts. In the present case the Plaintiff put those funeral expenses at K150,000.00; and I award them accordingly.

In a summary I make the following awards for the plaintiff: K1,500,000.00 for loss of expectation of life; K2,040,000.00 for loss of dependency; K150,000.00 for funeral expenses; K3,000.00 for cost of police report; K3,000.00 for cost of death certificate.

In total I order the Defendants to pay the Plaintiff the sum of **K3, 696,000.00**.

The Defendants shall also be condemned with costs.

MADE in Chambers this **7th** day of **June, 2016**.



Nyakwawa Usiwa Usiwa
DEPUTY REGISTRAR