



JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 416 OF 2013

BETWEEN

FAYINESS NYALUGWE (On her behalf and on behalf

of the beneficiaries of the Estate of

MCDONALD NYALUGWE, Deceased) ..... PLAINTIFF

AND

PRIME INSURANCE COMPANY LIMITED ..... DEFENDANT

CORAM HER HONOUR MRS E. BODOLE, ASSISTANT REGISTRAR

Khan, of Counsel for the Plaintiff

Chikaonda, of Counsel for the Defendant

Mrs. Ngoma, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

Introduction

The plaintiff is the widow of McDonald Nyalugwe and she commenced this action on her own behalf and on behalf of other beneficiaries of the estate of her late husband. Judgment on liability for personal injuries was entered against the



defendant on 24<sup>th</sup> February, 2016. The matter has now come for assessment of damages. I must thank Counsel for the plaintiff for the authorities on assessment of damages which were useful to this court.

### The Evidence

During the assessment proceedings only one witness testified and that was the plaintiff herself.

The facts of this case are that on or about 21<sup>st</sup> January, 2012 at around 8:30 hours, the deceased was lawfully cycling along Machinga-Liwonde road. Upon arrival at Public Works Office he was hit by a motor vehicle registration number MHG 2951 Hino Truck which was being driven by the defendant's insured driver.

As a result of the accident, the deceased who was aged 28 years, sustained severe head injuries, ruptured spleen and loss of blood from which he died upon arrival at Machinga District Hospital. The death certificate was tendered in evidence and marked as exhibit P.2.

Before his death, the deceased was enjoying a predominantly happy, vibrant and healthy life. He was the sole bread winner in his family and working at DAPP as a Shop Manager. He is survived by the plaintiff, 2 children namely Bridget Nyalugwe and Prince Nyalugwe who in 2013 were aged 4 years and 2 years respectively. He is also survived by his father Fredreck Sukali and his mother Catherine Jimu. As a result of the deceased's death, the plaintiff and other beneficiaries who solely depended financially on the deceased are struggling to survive and maintain themselves.

The plaintiff constantly misses her husband's comfort, love and care that he used to provide her. The children constantly ask her about their father which causes grave pain in her heart. In addition, she did not contemplate to raise 2 children on her own. It is very difficult for her to maintain the 2 children without the support of the deceased. It pains her to know that her children will grow up without a father due to the negligence of the defendant's insured.

As a result of the accident, the plaintiff had to incur unplanned funeral expenses for the burial of the deceased .

The plaintiff is claiming damages for loss of expectation of life, loss of dependency, funeral expenses and a sum of K13,500.00 for obtaining the medical and Police reports and costs of the action.

### General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983] 2 AC 773**. The court, however, considers the time the awards were made and currency devaluation – **Kuntenga and Another v Attorney General** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include loss of expectation of life and loss of dependency. These are assessed by the court. Pecuniary loss is also called special damages and must be pleaded and proved. – **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993.

### Damages for Loss of Expectation of Life

Damages for loss of expectation of life are claimable by a plaintiff where his injuries have reduced his expectation of life – **Flint v Lovell** (1935) 1 KB 354. They are extended to actions which have survived for the benefit of the deceased's estate and is thus available to the personal representatives of his estate.

In assessing the damages, the thing to be valued is not the prospect of length of days but of a predominantly happy life- **Venham v Gambling** [1919] AC 157. The damages are supposed to be modest and the sum is supposed to be conventional one – **Chikoti v Attorney General** [2006] MWHC 28. In **Masauko Ephraim (on his**

own behalf and on behalf of other dependents of the Estate of Shadreck Banda Deceased) v Limited v Prime Insurance Company Limited Personal Injury Cause Number 658 of 2012 (unreported) the court on 19<sup>th</sup> July, 2013 stated that currently the awards for loss of expectation of life should be in the region of K900,000.00. The court then proceeded to award the said sum of K900,000.00 as damages for loss of expectation of life. In Chipeto v Nyirenda Civil Cause No. 2135 of 2010 (unreported) the court on 27<sup>th</sup> July, 2012 awarded the plaintiff a sum of K1,000,000.00 as damages for loss of expectation of life. In the present case, the deceased and his family had lived a predominantly happy life. The plaintiff and the other beneficiaries of the deceased estate have been deprived the enjoyment of such a life. In view of the decided cases herein cited, and in view that the awards were made some time back, this court awards the plaintiff a sum of K1,500,000 as damages for loss of expectation of life.

#### Damages for Loss of Dependency

The foremost thing in this head is the amount of dependency. That is ascertained by deducting from the wages earned by the deceased the estimated amount of his own personal and living expenses. In Malawi this is estimated at a third of the deceased's income - Chikoji v Attorney General (supra). Where the deceased's monthly income is unascertained, the court awards a sum equivalent to what a domestic worker earns – Kenson Shapu v NICO General Insurance Company Limited Civil Cause Number 222 of 2007 (unreported). In calculating the damages, courts use the multiplicand and multiplier formula. The multiplicand is a figure representing the deceased's monthly earnings while the multiplier is the figure representing the estimated number of years the deceased would have lived if not for the wrongful death. The product of the multiplicand and the multiplier is multiplied by 12 representing the number of months in a year.

The deceased died aged 28 years. The World Health Organization puts the life expectancy for males in Malawi at 56.7 years [www.worldlifeexpectancy.com/malawi-life-expenctancy](http://www.worldlifeexpectancy.com/malawi-life-expenctancy). The court takes into account the fact that there would have been other factors that would have shortened the deceased's life. I would have to adopt a multiplier of 25. The minimum wage or domestic worker's earnings which is K17,880.20 would be used

as a multiplicand since there is no evidence as to how much the deceased was earning. The award under this head would, therefore, be K3,576,040.00.

### Special Damages

Special damages are supposed to be pleaded and proved. In **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** (supra) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded. In **Phiri v Daudi** [1992] 15 MLR 404 (HC) the court did not allow the claim for loss of profits as these were special damages that had to be specifically pleaded and strictly proved. The court awarded damages on the basis that during the period the vehicle was with the defendant, the plaintiff lost profit and use of the vehicle.

There is no evidence in the present case to show that the plaintiff expended the amount he is claiming for obtaining the death certificate from Machinga District Hospital. This is a free hospital so if some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the plaintiff had to travel to the hospital from home in order to obtain the death certificate. Reasonable compensation for that is fair and just. I, therefore, award him a sum of K2,500.00 as costs for obtaining the death certificate.

There is also no evidence to show how much the plaintiff spent for the funeral of the deceased. It is a fact that when a person dies, his survivors spend money for his funeral. It is also only fair and just that reasonable compensation for funeral expenses should be made. I award the plaintiff a sum of K30,000 as funeral expenses.

I award the plaintiff a sum of K3,000.00 as costs for obtaining the Police report, and also award him costs of the action.

Conclusion

In conclusion, the plaintiff is hereby awarded a total sum of K5,111,540.00 and costs of the action.

Pronounced in chambers this 26th day of June, 2017 at Blantyre.

**EDNA BODOLE (MRS)**

**ASSISTANT REGISTRAR**