



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

Personal Injury Cause Number 742 of 2012

**BETWEEN:**

**HILDA LONDONI (on her own behalf and on behalf of other dependants and beneficiaries of  
The estate of ROGERS FONDO, deceased)..... PLAINTIFF  
AND  
PRIME INSURANCE COMPANY LIMITED..... DEFENDANT**

**CORAM: Ms. CM MANDALA: ASSISTANT REGISTRAR**  
Mr Juma: Counsel for Plaintiff  
Messrs Russell, Smith & Associates: Defendant  
Mr PW Chitsulo: Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a Judgment entered on 25<sup>th</sup> November 2016 by the Honorable Justice HSB Potani. The Defendant's defence was struck off and Judgment was entered in favor of the Plaintiff. Damages payable to and recoverable by the Plaintiff were to be assessed by the Registrar and costs of the action were awarded to the Plaintiff.

The Plaintiff commenced the present action on 30<sup>th</sup> October 2012 claiming damages for loss of expectation of life, loss of dependency, special damages and costs of the action. The basis of the Plaintiff's claim was the passing of her brother on 10<sup>th</sup> March 2011 on the Chingeni-Balaka road near ICS junction when he was hit by a motor vehicle registration number BN 5524 Toyota Hiace Minibus driven by Gibson Chisale insured by the Defendant.

**EVIDENCE**

The Plaintiff, Hilda Londoni, lives in Ndirande and is a subsistence farmer. The Plaintiff adopted her witness statement and the supporting documents attached thereto as her evidence in chief. The witness statement states:

1. *My name is Hilda Londoni (nee Fondo). I am a Malawian citizen living in Balaka, Mazenga village, TA Nsamala, Balaka. I am a house wife and a subsistence farmer.*
2. *I am the Plaintiff herein and a sister of the deceased, Rodgers Fondo, I am familiar with the facts relevant to this matter.*



3. *I recall that it was on the night of 10<sup>th</sup> March 2011, when I got news that my brother was involved in a road accident at or near Sosola village on his way home from Chingeni roadblock where he had gone.*
4. *After the accident, the deceased was rushed to Balaka District Hospital where he was pronounced dead upon arrival. A copy of the death report is herein exhibited and shown as "HL 1".*
5. *The deceased died at the age of 54 years and he was survived by 9 children as well as other dependents such as myself. He was in good health and was working as a Security Guard at Balaka ADMARC Depot earning a monthly salary of MK13,770.77. His untimely death thereby brought great loss to the family as a whole including myself who depended on him. A copy of his pay slip for the month of December 2010 is herein exhibited and shown as "HL 2".*
6. *After commencing this action I was later informed that I needed to obtain Letters of Administration as hereto exhibited and shown as "HL 3".*
7. *I make this statement believing the same to be true to the best of my knowledge, information and belief.*

The witness exhibited a death report. It states: *"Date, place and cause of death – 10<sup>th</sup> March 2011, Balaka District Hospital, Hyporia secondary to chest injury, severe head injury. Full name, address, description and nationality of the deceased – Rodgers Fondo, Mazengera village, TA Nsamala, Balaka; Sex – M. Age – 54 yrs. Length of residence in the state – since birth. Name, address and description of informant – Robert Bwaluzi PO Box 138, Balaka. Orthopaedic clinical officer. Date of Registration – 28<sup>th</sup> June 2011, District commissioner whom registered – J Manyetera."*

The witness also tendered a copy of the deceased person's payslip from ADMARC for the month of December 2010. It states: *'Name: Fondo RM, Job: Security Guard, Dept: 01900 Balaka District Office, Location: Balaka District Office. Earnings: Basic Pay – 12,000, Overtime – 9,115.38, Taxable – 11,115.38, gross pay – 21,115.38 and Net pay – 13,770.77.'*

The final document tendered was an order for limited grant of letters of administration which stated: **"UPON HEARING** Counsel for the Applicant, **AND UPON READING** the affidavits of **HILDA LONDON AND JONAS FONDO** in support of the application; **IT IS HEREBY ORDERED AND DIRECTED** as follows: (1) **THAT** a Limited Grant be and is hereby granted to the applicants herein for the sole purpose of prosecuting a **court action** in Personal Injury Cause number 742 of 2012 between Hilda London and Prime insurance Company Limited on behalf of the deceased's estate. Dated 11<sup>th</sup> July 2014."

#### **SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF**

Counsel for the Plaintiff filed written submissions before the court.

Counsel for the Plaintiff submits that loss of expectation of life is a conventional award based on awards made in cases of similar nature to the one under consideration. Counsel further submits that recent judicial pronouncements have awarded over MK1,000,000.00 as damages for loss of expectation of life. Counsel cited an award of K1,200,000.00 for loss of expectation of life made on 7<sup>th</sup> January 2016; an award of K1,500,000.00 awarded by the court on 7<sup>th</sup> June 2016 for loss of

expectation of life with respect to a deceased who died at the age of 36; an award of K1,100,000.00 made on 7<sup>th</sup> August 2015 and an award of K1,200,000.00 was made on 22 April 2016 in respect of a deceased who died aged 33 years- ***Esther Kassim (suing on behalf of the estate of Losani Willy, deceased) v Stanley Dimusa and Prime Insurance Company Limited*** Personal Injuries Cause Number 56 of 2015; ***Anne Chilanga (suing on behalf of the beneficiary of Friday Nyopola (deceased) v Duncan Nyalugwe and Prime Insurance Company Limited*** Personal Injury Cause Number 659 of 2011; ***Rose Black (as administrator of the estate of Mabvuto Black (deceased) v Prime Insurance Company Limited*** Civil Cause Number 309 of 2013 and ***Paul Chamaza (on his own and on behalf of the dependants of Mrs Ivy Chamaza (deceased) and 2 others v Edward Nyirenda and Prime Insurance Company Limited*** Personal Injury Cause Number 383 of 2014.

Counsel submits that the Plaintiff should be awarded the sum of MK1,800,000.00 as damages for loss of expectation of life as the cases were decided some months ago and the value of the Kwacha has since deteriorated by over 100%.

On loss of dependency Counsel submits the case of ***Isaac Phoya (suing on behalf of Christina Matias, deceased) v Davie Magalasi and Prime Insurance Company Limited*** Personal Injury Cause Number 658 of 2012 where the court on 15<sup>th</sup> August 2015 used a multiplier of 2 for the deceased who died aged 60 years. In ***James Balakasi v Thumbiko Mshali and Prime Insurance Company Limited*** Civil Cause Number 308 of 2011 on 27<sup>th</sup> April 2015 the court used a multiplier of 4 for a deceased who died aged 75 years. In ***Elizabeth Mkanda (as administrator of the estate of Hagayi Mkanda and on her behalf and of other dependents) v Chancy Mpingasa and Citizen Insurance Company Limited*** Civil Cause Number 1340 of 2009 on 21<sup>st</sup> December 2009 the court used a multiplier of 5 for a deceased who died aged 60 years. In ***William Nsaliwa v Zoom Car Hire*** Civil Cause Number 35 of 2004 on 10<sup>th</sup> June 2008 the court adopted a multiplier of 10 despite the fact that the deceased, aged 54 years, had outlived the life expectancy which was pegged at 43.9 years at the time.

Counsel submits that a multiplier of 10 would be adequate in the circumstances as the deceased was still in good health at the time he died. With a monthly wage of K13,770.77 loss of dependency would be calculated as follows:

$$\text{MK13,770.77} \times 10 \text{ (multiplier)} \times 12 \text{ months in a year} \times 2/3 = \underline{\text{MK 1,101,661.60}}$$

#### THE LAW ON ASSESSMENT OF DAMAGES

The High Court in ***Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd*** [1992] 15 MLR 370 (HC) set the basis for assessment of damages:

*'Assessment of damages.....presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.'*

The rule is that prior to assessment, the injured party has provided proof of damage sustained – ***Yanu-Yanu Co Ltd v Mbewe*** (SCA) 11 MLR 405. Even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation – ***Mkumuka v Mphande*** (HC) 7 MLR 425.

The cardinal principle in awarding damages is '*restitutio in integrum*' which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained – **Halsbury's Laws of England** 3<sup>rd</sup> Ed. Vol. II p.233 para 400.

This principle was further enunciated in **Livingstone v Raywards Coal Co** (1880) 5 App Cas 25 at 39, where Lord Blackburn said:

*'...where any injury is to be compensated by damages, in settling the sum to be given for reparation 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, in the same position as would he have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'*

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - **Stros Bucks Aktie Bolag v Hutchinson** (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - **Govati v Manica Freight Services (Mal) Limited** [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded - **Wood Industries Corporation Ltd v Malawi Railways Ltd** [1991] 14 MLR 516.

Although perfect compensation is impossible, what the plaintiff should get is fair and adequate compensation - **British Commission v Gourley** (1956) AC 185. Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in **West v Shepherd** (1964) AC 326 at 346 where he states: '*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*'

The court bears in mind the sentiments laid out in **Steve Kasambwe v SRK Consulting (BT) Limited** Personal Injury Cause Number 322 of 2014 (unreported):

*'At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.'*

## COMPENSATION

### *Loss of Expectation of Life*

Damages under this head are claimable by a Plaintiff where injuries suffered by him have reduced his expectation of life - **Flint v Lovell** [1935] 1 KB 354. The claim for damages under this head also survives the demise of the injured plaintiff and is thus available to the personal representative of his estate – **Nyirongo v United Transport (Mal) Ltd** [1990] 13 MLR 344. In assessing damages under this head, the thing to be valued is not the prospect of length of days but of a predominantly happy life – **Bentham v Gambling** [1941] AC 157. No regard must be had to the financial losses or gains during the period of which the victim has been deprived, as these damages are in respect of loss of life, and not of future pecuniary loss - **Bentham v Gambling** [1941] AC 157.

In determining what damages to award the Plaintiff for loss of expectation of life, current awards are looked at to determine an appropriate amount of compensation. Counsel for the Plaintiff cited four awards: an award of K1,200,000.00 for loss of expectation of life made on 7<sup>th</sup> January 2016; an award of K1,500,000.00 awarded by the court on 7<sup>th</sup> June 2016 for loss of expectation of life with respect to a deceased who died at the age of 36; an award of K1,100,000.00 made on 7<sup>th</sup> August 2015 and an award of K1,200,000.00 was made on 22 April 2016 in respect of a deceased who died aged 33 years- **Esther Kassim (suing on behalf of the estate of Losani Willy, deceased) v Stanley Dimusa and Prime Insurance Company Limited** Personal Injuries Cause Number 56 of 2015; **Anne Chilanga (suing on behalf of the beneficiary of Friday Nyopola (deceased) v Duncan Nyalugwe and Prime Insurance Company Limited** Personal Injury Cause Number 659 of 2011; **Rose Black (as administrator of the estate of Mabvuto Black (deceased) v Prime Insurance Company Limited** Civil Cause Number 309 of 2013 and **Paul Chamaza (on his own and on behalf of the dependants of Mrs Ivy Chamaza (deceased) and 2 others v Edward Nyirenda and Prime Insurance Company Limited** Personal Injury Cause Number 383 of 2014.

In addition to the matter cited by Counsel, the court came across the following awards:

- **Makifale Dimingu et al v The Attorney General** Personal Injury Cause Number 749 of 2012 – the 6<sup>th</sup> Plaintiff was awarded the sum of MK900,000.00 as damages for loss of expectation of life. The 6<sup>th</sup> Plaintiff was 64 years old and the award was made in 2013.
- **Fidelia Diverson v Hassan Masambuka and Prime Insurance Company Limited** Personal Injury Cause 798 of 2012 – the Plaintiff was awarded the sum of MK650,000.00 as damages for loss of expectation of life with respect to a deceased who died at the age of 60 years and the award was made on 4<sup>th</sup> May 2017.

All awards cited range from MK650,000 to MK1,500,000, for deceased persons aged between 33 and 64 respectively and the awards were made in 2013 and 2017 respectively. This court will take into account the devaluation of the kwacha as a considerable amount of time has elapsed since these awards were made. Further, the deceased person in the present case was 54 years old, this places him at the higher end of the spectrum of ages where awards were made for loss of dependency. The



trend seems to show that the older the deceased person, or the closer a deceased person is to the life expectancy age the lower the award is. For these reasons and taking into account the devaluation of the kwacha since the previous awards were made this court awards the sum of **MK600,000.00** as damages for loss of expectation of life.

#### *Loss of Dependency*

For damages under this head, the basic rule is that they are to be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of life – **Franklin v SE Ry** (1858) 3 H & N 211 at page 214. There is no need for the dependant to show that the deceased was under a legal liability to support him or her - **Franklin v SE Ry** (1858) 3 H & N 211. There is also no need to show that the dependant was receiving pecuniary benefit at the time of the death, a purely prospective loss being sufficient. Thus, a dependant parent might not have reached an age of requiring assistance - **Franklin v SE Ry** (1858) 3 H & N 211; alternatively, a deceased child might not have reached an age when he or she could afford to render assistance – **Taff Vale Railway v Jenkins** [1913] AC 1.

In calculating damages for loss of dependency, the courts use the multiplicand and the multiplier method. The multiplicand is a figure representing the annual value of the dependency, and the multiplier is an approximated number of years over which such dependency is deemed to continue. The assessment is divided into two stages: firstly, the period between the date of death and the date of the trial and, secondly, the period following the trial. In arriving at the proper multiplicand, the calculations are made on the assumption that the deceased would have spent one-third of his income for personal expenses. The product of the multiplicand and the multiplier (starting figure) is scaled up or down, after taking into account the relevant considerations. The method adopted by the courts in determining the starting figure is to keep the multiplicand intact and either decrease or increase the multiplier. **Mbila et al v Attorney General et al** [1993] 16(1) MLR 283, **Banda and Chibuku Products Ltd v Chunga** [1987-89] 12 MLR 283 and **Thindwa v Attorney General et al** [1995] 1 MLR 336.

There are basically two considerations for which the courts decrease the multiplier. The first consideration is that a lump sum is being given and that it is therefore, likely to be invested. The second consideration is that contingencies might have arisen to cut off the benefit prematurely. Suffice to say, for now, the most important of the contingencies are to do with death and marriage. Conversely the multiplier may be increased over the years. It should be noted that where the deceased's income was ascertainable, the award for loss of dependency would be equal to the annuity lost for the period of the deceased person's expected employment had he been alive. However, when there is no evidence as to how much the deceased was earning, the court awards something equivalent to what a domestic worker earns – **Mbila et al v Attorney General et al** [1993] 16(1) MLR 283, **Thindwa v Attorney General et al** [1995] 1 MLR 336 and **Kenson Shapu v NICO General Insurance Company Limited** Civil Cause Number 222 of 2007.

The deceased herein was aged 54 years. He was employed as security guard at Agricultural Development and Marketing Corporation (ADMARC) where he made a monthly wage of K13,770.00 and was taking care of his wife, nine children and other dependants.

In term of the multiplier, existing case authorities state that life expectancy in this country is in the region of 45-50 years – **Emma Sitenala Piyano v Geoffrey Chipungu and Prime Insurance Company Limited** Civil Cause No 1254 of 2001. Statistics released in 2011 from UNDP pegged life expectancy in Malawi at 52 years. The deceased person herein, according to these statistics, had exceeded the life expectancy as pegged in Malawi. However, in this case, life expectancy would not be the adequate measure as he had defied the predicted life expectancy. Retirement age in Malawi for public servants is pegged at 65 years of age. Counsel for the Plaintiff suggests a multiplier of 10 years based on previous awards. However, this court will adopt a multiplier of 7 years as the deceased might not have reached retirement age when he would still be earning as he may have died due to other natural causes.

The court will use the multiplicand of deceased person's income at the time of his death. At the time of his death, the deceased was receiving a monthly wage of MK13,770.00.

$$= K13,770 \times 12 \text{ months in a year} \times 7 \text{ (multiplier)} \times 2/3$$

$$= \underline{\underline{\text{MK } 771,120.00}}$$

#### *Special Damages*

This court will not make an award for the cost of police and death reports as no evidence was led to prove the same. Cost of police and death reports are special damages and must be specifically pleaded and proved as required by law – **Govati v Manica Freight Services (Mal) Limited** [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred.

#### DISPOSAL

##### *Summary*

The Plaintiff is therefore awarded K500,000.00 for loss of expectation of life, MK771,120.00 for loss of dependency and nothing as special damages.

A total sum of MK1,271,120.00 is awarded in damages.

##### *Apportionment*

The court apportions the damages as follows:

1. Wife to deceased - MK 171,120.00
2. Children to deceased - MK 1,000,000.00 (to be administered by deceased person's wife)
3. Sister to deceased (Plaintiff) - MK 100,000.00

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 19<sup>th</sup> day of May at Chichiri, Blantyre

A handwritten signature in purple ink, consisting of a series of loops and a final upward stroke.

CM Mandala

**ASSISTANT REGISTRAR**