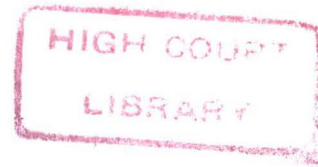




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REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 461 OF 2018

BETWEEN

ELIDA JOSEPH (suing for herself and on behalf of other beneficiaries of the estate of  
HENRY PIYO..... CLAIMANT

AND

UNITED GENERAL INSURANCE COMPANY LIMITED.....  
DEFENDANT

**CORAM:** Texious Masoamphambe, Deputy Registrar

Mr. Kalua, Counsel for the claimant

Mr. Jere, Counsel for the Defendant

Ms D. Nkangala, Official Interpreter

**Date of hearing:** 8<sup>th</sup> November, 2018

**Date of delivery of order on assessment:** 4<sup>th</sup> December, 2018

### ORDER ON ASSESSMENT

#### INTRODUCTION

This is this court's order on assessment of damages pursuant to a consent judgment obtained on 17<sup>th</sup> October, 2018 in favour of the claimant. The claimant is claiming damages for loss of expectation of life of the deceased, loss of dependency on the deceased and cost of the action.

The Claimant commenced the present action on 13<sup>th</sup> August, 2018 by way of summons. The Claimant is claiming damages for loss of expectation of life of the deceased, loss of dependency on the deceased and costs of the action

### **EVIDENCE**

The claimant had two witnesses in the names of Elida Joseph and James Piyo who told the court that they were a Mother and a brother to the deceased respectively.

In her evidence, PW1, Elida Joseph, tendered Exhibit JP1, her witness statement, and she adopted it, under oath, in its entirety. Materially, her story was that on 12<sup>th</sup> March, 2018 Henry Piyo then aged 42 died in a road traffic accident at a place near Lambat Offices along John Chilembwe Highway road when he was hit by a motor vehicle Reg. No. LA 5479, insured by the Defendant.

In his evidence, PW2, James Piyo, added that the deceased was getting a monthly salary of K36,000.00 at Sable Farming Limited.

As a result of the accident the deceased sustained several injuries and was rushed to Chiradzulu Hospital where he was pronounced dead few minutes later. The accident and resultant death were caused by the negligent driving of the said the vehicle.

### **ISSUE**

This court is invited to assess the damages payable to the Claimant for loss of expectation of life of the deceased, loss of dependency and cost of the action.

### **THE LAW**

#### **1. LOSS OF EXPECTATION OF LIFE.**

An action for loss of expectation of life is, at law, maintainable on behalf of the estate of the deceased and the prime factor always to be kept in mind is the prospect of predominant happy life. This was propounded in the case of *Rose v Ford (1937) A.C.826*.

As rightly pointed out by the Claimant, the award to be made in such an action is arrived at using the same principles used in arriving at claims for personal injuries. *Cain v Wilcock (1968) 2 All ER 817* is the case in point. The reason is that loss of life expectation is an aspect that cannot be

quantified in monetary terms by use of any known mathematical formula. The prime factor always to be kept in mind is the prospect of a predominantly happy life. This was held in the case of **Benham v Gambling (1941) AC 157**.

In order to provide a comparative basis, this court has considered comparable awards in cases similar to the instant one like the case of **Fayiness Nyalungwe v Prime Insurance Company, Civil Cause No 416 of 2013**, where the Court awarded K1, 520,000.00 to the Claimant for loss of expectation of life for the deceased who died at the age of 25.

In **Chipeto vs Nyirenda, Civil Cause No. 2135 of 2010**, the court awarded the Claimant a sum of Mk 1,000,000. 00 as damages for loss of expectation of life. In the case of **Annie Chilinga v Duncan Nguluwe, Civil Cause No. 659 of 2011** the court awarded Mk 1,500,000.00 for loss of expectation of life.

In respect of the matter at hand and in consideration of the cases cited above, I consider the sum of MK 1,500,000.00 as a reasonable sum and award it for the loss of life expectancy.

## **2. LOSS OF DEPENDENCY**

The approach the courts have adopted in arriving at damages recoverable in suits for loss of dependency is that of using what is termed the multiplicand and multiplier formula. The case in point is **Mtelera v Sabot Hauliers** 15 MLR 373 and **Mallet v McMonagle (1970) A.C. 166, 175**. The Multiplicand is the deceased's monthly income whilst the multiplier is the approximated number of years the deceased would have lived if it were not for the wrongful death.

The courts have reduced the award under this head by one third representing the portion the deceased would have expected to spend on personal pursuits. You may look at the case of **Annie Chilinga v Duncan Nyalungwe, Civil Cause No 659 of 2011**.

The relevant factor herein is that the deceased died aged 42 and enjoyed a good health life and vigorous life. He had many years to live had it not been for the wrongful death, with the life expectancy pegged at 53.35 as National Statistics Office at [www.nsomalawi.mnw](http://www.nsomalawi.mnw) puts it. The deceased had all the chances of reaching 53 that is taking into account all the eventualities that life consists of. The deceased had close to 11 years to live if it were not for wrongful death.

A close look at several relevant case authorities show that the most relevant factor which the courts have considered in mind when making these awards is the age of the deceased at the time of death. In this present case, the deceased died at 42 years of age and would have lived 11 more years if it were not for the wrongful death.




is the award under this head? Here is the award: MK 36,000.00 x 11 x 12 x 2/3 coming up to MK3,168,000.00. The sum of MK MK3, 168,000.00 is, therefore, awarded to the Claimant herein as damages for loss of dependency.

### **Conclusion**

In conclusion, therefore, I award the claimant the sum of MK 1,500,000.00 for loss of expectation of life and MK 3,168,000.00 for loss of dependency. In total the claimant is awarded MK4,668,000.00. The defendants are further condemned in costs of this action.

Made in chambers this 4<sup>th</sup> day of December, 2018.

  
*Texious S. Maspamphambe*  
**DEPUTY REGISTRAR**