



The Judiciary

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 235 OF 2018**

**Between**

**AGNES MAGALETA (Suing for and on behalf of the Beneficiaries of the estate of Francis Magaletta- Deceased) ..... CLAIMANT**

**-and-**

**PETER NAMAONA NGONDO ..... 1<sup>ST</sup> DEFENDANT**

**PRIME INSURANCE COMPANY LIMITED..... 2<sup>ND</sup> DEFENDANT**

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**CORAM: A.J. Banda, Assistant Registrar**

Mr. L. Mickeus, for the Claimant

Mr. S. Chisale, for the Defendants

Ms. M. Galafa, Clerk/ Official Interpreter

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Banda

**JUDGMENT ON ASSESSMENT OF DAMAGES**

**Background**

The claimant, who is the widow of the deceased Francis Magaletta, commenced this proceeding in court asking for damages for loss of life expectation, loss of dependency, funeral expenses amounting to K 500,000.00 and costs of the action. The proceeding arose from the untimely death of Francis Magaletta who died on 20<sup>th</sup> June, 2018 when he was knocked down from a motor cycle that he was riding by a motor vehicle registration number MHG 3442, Nissan X-Trail, due to the negligence of the motor vehicle's driver at the material time, the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant was sued as an insurer of the motor vehicle in issue. The claimant applied for summary judgment which the defendants did not contest and was consequently entered by

the Honourable Justice Jack Nriwa. The Honourable Judge directed that assessment of damages be before the Registrar. I heard the two parties for the purposes of assessment of damages on 1<sup>st</sup> March, 2019. The claimant was the only witness. The defendants did not call any witnesses.

### **Evidence**

Agnes Magaleta adopted her filed witness statement. She stated in it that she was an administratrix of the estate of her late husband who died from the accident caused by the 1<sup>st</sup> defendant's negligence. She tendered a death report prepared by Professor J. Wirima which shows death was as a result of brain damage due to a road accident. It shows also that the deceased died at the age of 57. She said that her husband was working as a depot supervisor at ADMARC where he was earning a basic monthly salary of K195,164.20. She tendered the last pay slip for her husband, a pay slip for the month of June, 2018.

The claimant said that her husband was enjoying very good health and he had no health complaints in his entire life. She further said that her husband was the one who paid all bills and took care of all house expenses. She said that her husband was responsible for paying school fees for all their five children and a grand child that was under his care. She further said that her family expended K500,000.00 during the funeral of her husband. She therefore asked for compensation as the family was suffering quite severely.

In cross examination, the claimant told the court that her husband was born in the year 1962. She said she could not tell the ages of her children but stated that they were all in school at different levels.

### **Issue**

The only issue in this matter at this stage is the amount of damages payable for loss of expectation of life, loss of dependency and recovery of funeral expenses.



### **Analysis of Law and Fact**

The starting point is that assessment of damages presupposes that damages have been proved and what remains is the measure of the amount of the damages- see the case of **Ngosi t/a Mzumbamzumba Enterprises v. Amosi Transport Co Ltd [1992] 15 MLR 370(HC)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**. Damages in a case like this one, are not awarded to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of the defendant's wrongful act or omission. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

### **Loss of Expectation of Life**

Awards for claims of loss of expectation of life takes into account the number of years a deceased person was expected to live without necessarily attaching value to the years but that the claimant enjoyed a predominantly happy life. Generally, courts consider the country's life expectancy when making such an award- **Samuel Chawanda v. Attorney General Civil Cause No. 3556 of 2002 High Court, Principal Registry (unreported)**. The court also factors in life's ups and downs. It is a fact of life that misfortunes abound in the human realm that lessens a person's natural length of life- **Aaron Amosi and Another v. Prime Insurance Company Limited, Personal Injury Cause no. 133 of 2013, High Court, Principal Registry**.

I have looked at a plethora of cases on this head. The damages are ranging between K900,000.00 and K1, 800,000.00. For instance, in the case of **Masaoko Ephraim (suing on his own behalf and on behalf of other dependents of the estate of Shadreck Banda, Deceased) v. Prime Insurance Company Limited, Personal Injury Cause Number 658 of 2012**, K900,000.00 was awarded as damages for loss of expectation of life. In the case of **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**; an award of K1, 200,000.00 was made. In **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** an award of K1, 500,000.00 was made as damages under this head. In the case where a boy had his life wrongfully terminated at a tender age of 12, the court awarded K1, 800,000.00- **Lastone Chidule (suing on his own behalf and on behalf of other dependants of Mphatso Chidule) v. ESCOM Limited Personal Injury Cause No. 947 of 2015**. This award was made in May, 2018.

In the instant matter, the deceased was 57 years old. He had advanced in age towards life expectancy. Life expectancy in Malawi at the time of the deceased's death in 2008 was 61.4 years for males, 66.8 years for females and 64.2 years for all, on average, according to the data published by World Health Organisation in 2018, ([www.worldlifeexpectancy.com](http://www.worldlifeexpectancy.com)). The deceased enjoyed robust health though. In that regard, I award the claimant **K 1, 600,000.00** as damages for loss of life expectancy.

### **Loss of Dependency**

Courts use a multiplicand and multiplier formula to come up with an award for loss of dependency. The multiplicand is the figure representing the deceased's monthly earnings which is also multiplied by the figure 12, being the number of months in a year. The multiplier is an estimated number of years the deceased would have lived if it were not for the wrongful death. Courts use actuaries to ascertain life expectancy- **Sakonda v. S.R. Nicholas Civil Appeal Cause Number 67 of 2013, High Court Principal Registry (unreported)**. In this case as shown above I am using statistics provided by World Health Organisation. In



determining loss of dependency, a third of the deceased person's earnings are also subtracted as representing a part of the earnings that the deceased would have spent on himself.

In the instant matter the claimant tendered the deceased's pay slip. It shows that his basic pay was K195, 164.20 at the time of death. I will deduct the sum of K48, 799.26 which is Pay As You Earn (PAYE) tax. The multiplicand is therefore K146, 364.94 x12. The deceased died at the age of 57 according to the reliable death report. Naturally it was expected that the deceased would live up to 7 more years later. He was living a good and healthy life according to the claimant, that he had no health complaints at all, even at that advanced age. I will therefore use 7 as the multiplier. Life expectancy therefore is equal to (K146, 364.94 multiplied by 12 multiplied by 7 multiplied by two thirds) **K 8, 196,436.64.**

### **Funeral Expenses**

The claimant prayed that the funeral expenses incurred by the family be reimbursed. It was her claim that the amount they spent on the funeral was K500,000.00. The sole witness barely gave evidence of this expense in both her written and oral testimony in court. Is that fatal to the claim? In my view, it is not. It is not at all times when receipts are given for purchases. In fact, most local vendors rarely give receipts. It would have been helpful in assessing the damages to be awarded under this head if the claimant stated what service and/or goods were paid for to accumulate such an expense. Otherwise it follows that when the deceased died the family had to incur costs of the funeral. For that reason, I will treat the damage as a natural consequence of the wrong by the defendants, and award general damages- see **Stros Bucks Aktie Bolag v. Hutchinson (1905) AC 515**. If the court finds the evidence of expenses having been incurred to be believable on the balance of probabilities, then the expenses are proved- see the case of **Renzo Benetollo v. Attorney General and National Insurance Company Limited, Civil Cause No. 279 Of 1993, High Court, Principal Registry (unreported)**.

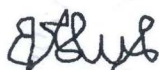
In determining what award to make, I am mindful that I have to be fair to the defendants as well. They have to pay for only what was really incurred and incurred only in connexion to their fatal negligence. Normally on a funeral, costs incurred revolve around cost of the coffin, transportation, foodstuffs for mourners and a few incidentals. They did not dispute the sum as

claimed by the defendants at all. I find the global figure of **K500,000.00** to be reasonable. I award it under that head.

### **Conclusion**

The claimant is awarded a total sum of **K10, 296,436.64** as damages for loss of life expectancy and loss of dependency, and funeral expenses. The claimant is also awarded costs of the assessment. The costs shall be assessed by the registrar if the parties cannot agree the amount.

Made this 19<sup>th</sup> day of March, 2019.



Austin Jesse Banda

**ASSISTANT REGISTRAR**