



REPUBLIC OF MALAWI

**IN THE HIGH COURT OF MALAWI**

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 337 OF 2017

BETWEEN:

AJIBU FRANK (Suing on his own behalf and on behalf of the beneficiaries of the estate of Martin Frackson (Frackson) (deceased).....CLAIMANT

AND

CHARTER INSURANCE COMPANY LIMITED .....1st DEFENDANT

AVIS RENT A CAR.....2nd DEFENDANT

CORAM: T. SOKO: ASSISTANT REGISTRAR

MR KAPOTO : COUNSEL FOR THE CLAIMANT

DEFENDANT: ABSENT

N. MUNTHALI : OFFICIAL INTERPRETER

**ASSESSMENT ORDER**

**BACKGROUND**

This is an action by the claimant against the defendant's claiming damages for loss of expectation of life, loss of dependency and funeral expenses. The facts are that the claimant's brother Martin Frackson was involved in an automobile accident on 23rd February 2014. The deceased sustained severe head injuries and died upon arrival at Machinga District Hospital. The matter was commenced before the Principal Resident Magistrate and after the judgment was delivered the magistrate ordered that the assessment proceedings be referred to the Registrar of the High Court. The order is dated 24<sup>th</sup> January 2017.

## EVIDENCE

In evidence the claimant adopted his witness statement where he stated that he was a brother to the deceased and one of the administrators of the estate of the deceased. He tendered a Limited Grant Order dated 5<sup>th</sup> February 2015. He stated that on 23<sup>rd</sup> February 2012, the deceased was cycling along Liwonde-Mangochi road when upon arrival at or near Mgoms lodge he was hit by motor vehicle registration number BLK 4091 Toyota Hilux which was being driven by Joe Karim from the direction of Liwonde heading towards Mangochi. The claimant stated that because of the accident, the deceased sustained a deep cut wound on the leg and severe head injury from which he died upon arrival at Machinga District Hospital. The claimant stated that the deceased died at the age of 38 and he was enjoying a predominantly happy and vibrant health life but for his untimely and wrongful death. The claimant stated that the deceased was survived by two wives and five children and other dependants including himself. The deceased was engaged in the business of bicycle taxi and was sole breadwinner in his respective families. He stated that they also incurred unexpected expenses for the arrangement of the burial of the deceased. The claimant tendered police and death reports as part of evidence.

## SUBMISSIONS

In submissions Counsel for the claimant prayed for a sum of K1, 000,000.00 as damages for loss of expectation of life and K2, 431, 707.20 damages for loss of dependency.

## GENERAL LAW ON DAMAGES

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been if it would have not been for the tort committed. See *Namwiyo v Semu (1993) 16 (1) MLR 369.*

In calculating damages, therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. See *Admiralty Commisioners vs S.S Valeria (1992) 1 A.C. 242 at 248.*

*In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329of 2016 the Court quoting Wright vs British Railway Board 1938 AC 1173, 1177 stated that:*

*'Non-economic loss... is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all*



*litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'*

In the case of **City of Blantyre vs Sagawa** the court said the following:

*'It would appear to us that if the award is to be conventional, **an award for a similar injury** should be comparable and should, to some extent, be influenced by amounts awarded in the previous case, either in the same or neighboring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.*

### **LOSS OF EXPECTATION OF LIFE**

In the case of **Aaron Amosi (on his own behalf and on behalf of the estate of Teleza Amosi and Lanjesi Lile vs Prime Insurance Company Limited Personal Injury Cause No. 133 of 2013 PR (unreported)** the Court stated that the claim is based on the notion that due to the injuries suffered the deceased would not have enjoyed his life to the same extent as when he was in good health **.see Benham vs Gambling (1941) ALLER 7.** The damages are non-pecuniary and the Court use common sense, reference being had to the earliest awards without actually assigning value to the years lost. All relevant factors such as the age of the individual, prospects of life and life expectancy are to be considered. It must be remembered that human life is not continually enjoyable so as to deserve compensation for any shortening thereof on quantitative basis. Life's vicissitude are therefore to be taken into consideration too.

**In Mbaisa vs Ibrahim Ismail Brothers** the Court stated that this action is brought for the benefit of the estate and must be brought by the personal representative only. **In Binwell Tembetani and others vs Malasha Holdings limited t/a Malasha Bus Company and others** it was stated that damages for loss of expectation of life accrues to the estate of the deceased and for that reason can only be claimed by an executor, administrator or personal representative. It was further stated that a plaintiff cannot bring such action without obtaining letters of administration.

Section 7 of the Statute Law (Miscellaneous provisions) Act:

*Where, in any case intended and provided for by this Part, there shall be no executor or administrator of the person deceased, or if no action is brought by such executor or administrator within six months after the death of such deceased person, an action may be brought by and in the name or names of*

*all or any of the persons for whose benefit such action would have been brought, if it had been brought by and in the name of such executor or administrator, and every action so brought shall be for the benefit of the same person or persons as if it were brought by and in the name of such executor or administrator.*

## LOSS OF DEPENDENCY

**Makifale Dimingu and others vs The Attorney General personal injury cause No. 749 of 2012.** (High Court) (Unreported) the court held that:

*Damages for loss of dependency are calculated in reference to a reasonable expectation of pecuniary benefit as of right or otherwise from continuance of life. 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. **See Ntelera vs Sabot Hauliers 15 MLR 373 and Mallet vs Mc Monagle 1970 AC 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. As rightly pointed out by the 6th plaintiff in order to arrive at the level of dependency, the multiplicand is multiplied by the multiplier and the figure is 12 representing the number of months in a year. Whatever the product there is a reduction of one third representing the portion the deceased would have presumably expended on purely personal needs.'*

## DETERMINATION

In the present matter the evidence shows that the deceased was 38 years old at the time of his demise. He was still in good health and vibrant. The evidence also shows that he was still running his business at the time of his death which means he was energetic. **In the case of Grace Chipeto vs Johnson Nyirenda and another Civil Cause No. 2135 of 2012** the court awarded the sum of K800,000.00 for loss of expectation of life where the deceased died at the age of 27. The award was made on 26<sup>th</sup> July 2012.

In the light of the foregoing reasons I award a sum of K900, 000.00 as damages for loss of expectation of life.

On loss of dependency the deceased died at the age of 38. Life expectancy in Malawi is pegged at 55 which means he had 17 more years to live. However the court considers the vicissitude of life and reduces the years to 14. Besides the deceased monthly income was not known. Counsel submitted that an equivalent of

what a domestic worker earns K687.70 be used. Using the multiplier and multiplicand formula I award a sum of K2, 002,582.4 as damages for loss of dependency.

There is no evidence to prove funeral expenses but I award a sum of K20, 000.00

In total I award a sum of K2, 902,582.4

Costs are for the claimant.

Pronounced in chambers on this 8<sup>th</sup> day of January 2019.

A handwritten signature in black ink, consisting of a stylized 'T' and 'S' followed by a flourish.

**T. SOKO**

**ASSISTANT REGISTRAR**