



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

Civil Cause Number 787 of 2011

**BETWEEN:**

**MADALITSO NG'AMBI (as personal representative of  
the estate of MISHECK NG'AMBI (deceased)).....CLAIMANT**

**AND**

**FARGO LIMITED.....1<sup>ST</sup> DEFENDANT**

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

**CORAM: C MANDALA: ASSISTANT REGISTRAR**

Songea: Counsel for the Claimant of Lloyd & Associates

Dzimphonje: Counsel for the Defendants of Winlaw Ndau

C Zude: Court Clerk

**ASSESSMENT OF DAMAGES**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a Settlement Agreement entered on 1<sup>st</sup> November 2019 pursuant to settlement being reached during mediation by Honorable Justice Dr CJ Kachale. Judgment was entered with respect to liability for the action and the parties were to negotiate the quantum of damages. These negotiations failed and the matter came before the Assistant Registrar for assessment of damages on 14<sup>th</sup> August 2020.

The claim arose from an incident that occurred on 10<sup>th</sup> May 2017 where the 1<sup>st</sup> Defendant's employee/agent, while driving from the direction of Mpsasa Trading Centre to Miseufolo along the Phalombe-Jali road, drove a vehicle that tipped over and cause a machine that was carried to fall on the deceased who was cycling from the opposite direction. The deceased sustained severe head injuries and was pronounced dead upon arrival at Phalombe Health Center. The deceased person's bicycle was also extensively damaged.

**EVIDENCE**

The Claimant, Madalitso Ng'ambi, adopted her witness statement as evidence in chief. The witness statement states:

I am **MADALITSO NG'AMBI** of c/o the Association of Jehovah's Witnesses, PO Box 30749, Lilongwe 3.

1. I am the Claimant in this matter.
2. The deceased was my husband.
3. The 1<sup>st</sup> Defendant was at all material times the owner of motor vehicle registration number BP 9300 Mitsubishi Colt Pick Up.
4. The 2<sup>nd</sup> Defendant was at all material times the insurer of the motor vehicle registration number BP 9300 aforesaid and was sued in that capacity.
5. On or about the 2<sup>nd</sup> of May 2017 the 1<sup>st</sup> Defendant's employee or agent Steven Mbandambanda was driving the 1<sup>st</sup> Defendant's motor vehicle the said BP 9300 in the direction of Miseufolo Roundabout from the direction of Mpsasa Trading Centre along the Phalombe-Jali-Zomba road.

6. *Myself, my husband, the deceased and a Mr Isaac Msosa were walking along the same road going in an opposite direction of the said motor vehicle.*
7. *The said driver was pulling a machine called broomer that was connected to the motor vehicle registration number BP 9300 aforesaid.*
8. *At a place near Mvunguti Primary School the broomer got disconnected from the motor vehicle registration number BP 9300 and hit and dragged my husband, the deceased, along with it until where it stopped on its own at a considerable distance from the spot where it hit the deceased. Attached hereto and marked "MN 1" and "MN 2" are the pictures of the said motor vehicle registration number BP 9300 and the broomer itself respectively.*
9. *"MN 2" also shows the metal bar that was used to connect the broomer to the motor vehicle.*
10. *The broomer also completely damaged the bicycle that the deceased was pulling along with him.*
11. *The deceased sustained severe head injuries and was pronounced dead upon arrival at Phalombe Health Center.*
12. *The matter was reported to the police. The police recorded statements from myself and the said Mr Isaac Msosa. Attached hereto and marked "MN 3" is a copy of the statement.*
13. *Phalombe District Health Office produced a report which I attach hereto and mark "MN 4". Also attached and marked "MN 5" is a copy of the certificate of death for the deceased.*
14. *The Police produced a report. Attached hereto and marked "MN 6" and "MN 7" are copies of the receipt for payment to procure the police report and the police report itself respectively.*
15. *The deceased was buried in his home village in Karonga district. Transport cost for the body was K1,100,000.00. Attached hereto and marked "MN 8" is a copy of the receipt for payment for hiring a coaster from Blantyre to Karonga. The coaster was hired from Blantyre because that is where it was available.*
16. *A total of K100,000.00 was spent on funeral expenses. Attached hereto and marked "MN 9" is a copy of a list of items constituting these expenses that was provided to the Defendants.*
17. *The cost of replacing the bicycle is K65,000.00*
18. *At the time of his death the deceased was aged 40.*
19. *At the time of his death, the deceased was working as a Church Minister for the Registered Trustees of the Association of Jehovah's Witnesses in Malawi and was receiving a monthly allowance of K115,240.33. Attached hereto and marked "MN 10" is a copy of an email from the Registered Trustees of the Association of Jehovah's Witnesses of Malawi to my legal practitioner confirming the monthly income for the deceased.*
20. *Through a settlement agreement dated 1<sup>st</sup> November 2019 a judgment for liability for the action was entered against the Defendants.*
21. *However, the parties failed to agree on the quantum of damages and costs.*
22. *I submit the information above to help the court to determine the appropriate quantum for damages, for loss of expectation of life, loss of dependency, special damages and costs for this action.*

In cross examination, the Claimant told the court that she had brought all documents regarding her case to court. The claimant confirmed that deceased was 40 years old at the time of his death and that the death certificate states the date of death as 2<sup>nd</sup> May 2017. The Claimant further confirmed that Exhibit MN8 was a receipt for transportation costs for the funeral. The costs were not paid for by the Association of Jehovah's Witnesses although the receipt was a cash sale written out to the Association of Jehovah's Witnesses. The Claimant confirmed that Exhibit MN9 was a write-up of the amount of money spent during the funeral. The Claimant told the court that the deceased person's bicycle cost K65,000 but she didn't bring any documentation to prove the receipt obtained after purchase had been lost. The Claimant was taken to paragraph 19 of the witness statement and she confirmed that she does not have a letter from her husband's employer. She confirmed that Pastor's from Jehovah's witness do not receive a salary, but they do receive a monthly allowance. The deceased received a monthly allowance of K115,000. She

further confirmed that she did not bring any documentation or banks statements to that effect, but she knew that her husband received money from the bank.

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant’s loss and the devaluation of the Kwacha would attract awards totalling K22, 667, 100.00 for loss of expectation of life, loss of dependency, and special damages.

On loss of expectation of life, Counsel for the Claimant cited comparable awards where the court awarded the sums of K1,500,000.00 as damages for loss of expectation of life. The awards were made in 2018 and 2017 respectively. See; *Kwerani v Masamba & Prime Insurance Company Limited* Civil Cause Number... of 2011; and *Nyalungwe v Prime Insurance Company Limited* Personal Injury Cause Number 416 of 2013.

On loss of dependency, Counsel for the Claimant based his computations on the multiplier and multiplicand approach. Counsel for the Claimant submits that the deceased’s net salary of K115,240.33 be the multiplicand as per the email communication in Exhibit MN 10. Counsel submits that the computations be based on a multiplier of 56.7 as life expectancy in Malawi found in the 2017 award for loss of expectation of life in *Fayiness Longwe (on her own behalf and on behalf of the beneficiaries of the estate of McDonald Nyalugwe (deceased)) v Prime Insurance Company Limited* Personal Injury Cause Number 416 of 2013. Counsel made the following computations:

$$\begin{aligned} &K115,240.33 \times 12 \times 16.7 \times 2/3 \\ &=K15,396,100.00 \end{aligned}$$

On special damages, Counsel for the Claimant avers that both the receipts for funeral expenses, police and medical reports were made out to the Association of Jehovah’s Witnesses. The Association of Jehovah’s Witnesses was merely assisting the Claimant, and this should not prejudice her claims. Counsel for the Defendant opposes the receipt for funeral expenses and not the ones for the police report despite this. Counsel argues that the following sums ought to be awarded to the Claimant as special damages: K1,200,000.00 for funeral expenses, K65,000 for the damaged bicycle and K3,000 for the police report.

SUBMISSIONS BY COUNSEL FOR THE DEFENDANT

On loss of expectation of life, Counsel for the Defendant submits that the Claimant is not entitled to any award as the cause of action is only maintainable by an executor, administrator or personal representative of the estate. At the time of commencement of action, the Claimant was not administratrix of the estate and therefore isn’t entitled to damages. However, Counsel for the Defendant argued that in the event that the Court still awards the Claimant under this head, the Claimant should be awarded the sum of K700,000. Counsel cited some comparable awards where the court awarded K650,000 in 2017 and K600,000 in 2018 as damages for loss of expectation of life. See: *Feedelia Diverson v Hassan Masambuka & Prime Insurance Company Limited* Personal Injury Cause Number 798 of 2012; and *Hilda Londoni (on her own behalf and on behalf of other dependents and beneficiaries of the Estate of Rogers Fondo, deceased) v Prime Insurance Company Limited*.

On loss of dependency, Counsel for the Defendant argued that Exhibit MN 10 is neither a bank statement nor a payslip and ought not be admitted as proof of the Defendant’s earnings. Counsel implored the Court to revert to calculations of loss of dependency using a multiplier of the minimum wage at the time of the deceased person’s demise which was pegged at K17,880.00. Counsel suggested a multiplicand of 8 to

represent life expectancy of 52 years and a subtraction of 3 to account for the vicissitudes of life and a lump sum payment being made. Therefore, the Court ought to make the following award:

$$\text{MK } 17,880.20 \times 12 \times 8 \times 2/3$$

$$= \text{K1, 144, 332. 80}$$

On special damages, Counsel for the Defendant submits that the receipts for funeral expenses were made out to the Association of Jehovah's witness. This shows that the expense was incurred by the Association and not by the Claimant. Counsel conceded that the sum of K100,000 was an appropriate amount for purchase of food items during the funeral. Counsel further submitted that the claims for the cost of the bicycle and procurement of police report were unsubstantiated and no award be made for these.

### ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant's pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.<sup>1</sup> Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.<sup>2</sup> 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*<sup>3</sup> by stating: '*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 mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*<sup>4</sup>, the Supreme Court states: "*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*" In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,<sup>5</sup> the Court states: "*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*" In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: '*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.*'

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<sup>1</sup> See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

<sup>2</sup> *British Commission v Gourley* (1956) AC 185.

<sup>3</sup> *West v Shepherd* (1964) AC 326 at 346.

<sup>4</sup> [1996] MLR 486.

<sup>5</sup> Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

## COMPENSATION

### *Loss of Expectation of Life*

Damages under this head are claimable by a Claimant 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.

Counsel for the Defendant submits that the Claimant is not entitled to any award as the cause of action is only maintainable by an executor, administrator or personal representative of the estate. At the time of commencement of action, the Claimant was not administratrix of the estate and therefore isn't entitled to damages. In response, Counsel for the Claimant argued that 1) as per section 7 of the **Statute Law (Miscellaneous Provisions) Act**, there is no action by an administrator or executor of the deceased person that has been commenced to date, and 2) that the High Court has held that a Claimant who does not have letters of administration is still entitled to bring an action such as this – *Lackson Kwerani (suing on his own behalf as father of Saukira Kwerani (deceased) and on behalf of other dependant of the deceased) v MacDonald Masamba and Prime Insurance Company Limited* Personal Injury Cause Number 99 of 2011. These opposing claims are worth discussing.

Section 3 of the **Statute Law (Miscellaneous Provisions) Act** (Cap 5:01) of the Laws of Malawi states (emphasis provided):

Whenever the death of a person is caused by a wrongful act, neglect or default, and **the act, neglect or default is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured** and although the death shall have been caused under such circumstances as amount in law to felony.

Section 4 of the **Statute Law (Miscellaneous Provisions) Act** (Cap 5:01) of the Laws of Malawi then states (emphasis provided):

(1) Every action brought by virtue of this Part shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, **and shall, subject to section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action, the court may award such damages as it may think proportioned to the injury resulting from such death to the persons respectively for whom and for whose benefit such action is brought;** and the amount so recovered after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned persons in such shares as the court, by its judgment, shall find and direct:

Provided that not more than one action shall lie for and in respect of the same subject-matter of complaint, and that every such action shall be commenced within three years after the death of such deceased person.

(2) In assessing damages, under subsection (1), the court shall not take into account—

- (a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of this Act;
- (b) any widows' or orphans' pension or allowance payable or any sum payable under any contributory pension or other scheme declared by the Minister, by notice published in the Gazette, to be a scheme for the purpose of this paragraph.

Section 7 **Statute Law (Miscellaneous Provisions) Act** (Cap 5:01) of the Laws of Malawi referred to above states (emphasis provided):

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.**

Counsel for the Defendant contends that the Claimant was not administratrix at the time that the action was commenced and therefore isn't entitled to damages for loss of expectation of life: *Helani v Hawken & others* – Personal Injury Cause Number 808 of 2011. In this case, the deceased met his demise on 10<sup>th</sup> May 2017 and this action was commenced on 27<sup>th</sup> July 2017. As per section 7 of the **Statute Law (Miscellaneous Provisions) Act**, the Claimant should have obtained letters of administration and been appointed as administratrix of the deceased estate. Without being appointed administratrix, she should have commenced the action at least 6 months after the demise of the deceased. In this case, the action was commenced two months after the demise of the deceased.

On the other hand, Counsel for the Claimant argues that there has been no action commenced in this respect by an executor or administrator of the deceased person's estate. Claimants not duly appointed as administrators/ administratrix and not having letters of administration are still entitled to commence claims for loss of expectation of life: *Lackson Kwerani (suing on his own behalf as father of Saukira Kwerani (deceased) and on behalf of other dependants of the deceased) v MacDonald Masamba & Prime Insurance Company Limited* – Personal Injury Cause Number 99 of 2011. A reading of Section 7 suggests that the law intended that wrongful death suits should benefit the deceased person's beneficiaries, whether its through or by the administratrix/ executors. The provisions suggest that the law's aim was to ensure that the bereaved family is compensated, and this ought not be impinged by an administratrix/executor who might delay commencement of the suit. It is unlikely that the goal was to completely prevent compensation for bereaved families whose loss was occasioned by an identifiable person.

In determining what damages to award the Claimant for loss of expectation of life, current awards are considered in order to determine an appropriate amount of compensation. Counsel for the Claimant cited awards of K1,500,000.00, and K1,500,000.00 as damages for loss of expectation of life made in 2017 and 2018 (see citations above). Counsel submits that a total sum of K3,000,000 is however appropriate for the Claimant. On the other hand, Counsel for the Defendant cited comparable awards of K650,000 and K600,000 made in 2017 and 2018 respectively. Counsel suggests that the amount of K700,000 would be adequate compensation under this head.

Taking into account the amount of time that has passed since the accident occurred as well as, the time that has elapsed since the awards cited by Counsel were made, this court believes an adequate award for the Claimant would be **K1,000,000.000 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 41 years at the time of his death. He was a Pastor who is survived by a wife, the Claimant herein. The deceased died on 10<sup>th</sup> May 2017 and made K115,240.33 as exhibited in 'MN 10'. Counsel for the Defendant opposes the use of this exhibit as proof of the deceased person's earnings, claiming that it is neither a pay slip nor is it a bank statement. Counsel for the Claimant argues that undue regard to technicalities ought not be had and that the paramount consideration should be upholding justice. I concur with Counsel for the Claimant. However, this court will adopt the sum of K90,335.98 which, as explained in the exhibit, would have been deposited into the deceased person's account and excludes PAYE submitted on his behalf by the Registered Trustees of the Association of Jehovah's Witnesses. This sum is broken down in 'MN 10' as follows: 'Basic allowance – K55,000 per month, Personal Expense Account Allowance – USD 35 per month converted to K25,335.98 (on the lower end); and Housing Allowance - K10,000 per month' - totalling K90,335.98 per month. This court adopts this amount as the multiplier.

In terms 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 more recent case of *Lucy Chitsotso Chatayika v Emmanuel Kaludzu and United General Insurance Co. Limited* Civil Cause Number 1146 of 2016 (unreported) pegged life expectancy at 61.2 years.

The deceased was a Pastor who took care of his family and might not have attained the age of 61.2 years despite the accident. A simple subtraction of the deceased's age from the life expectancy (see *Fatima Jackson v Evans Elias and Prime Insurance Co Ltd* Civil Cause Number 618 of 2013 (unreported) would give us a multiplier of 20.2. However, Counsel for the Claimant suggested a multiplier of 16.7 based on life expectancy of 56.7, and this court adopts 16.7 as a multiplier based on Counsel's submission.

Herewith the computations:

$$\begin{aligned} &= (\text{K}90,335.98 \text{ (per month)} \times 12) \times (16.7 \text{ (multiplier)} \times 2/3) \\ &= \text{K}1,084,031.76 \times 11 \\ &= \underline{\underline{\text{K}11,924,349.40}} \end{aligned}$$

Based on the foregoing discussion, this Court awards **K11,924,349.40 to the Claimant for loss of dependency.**

### *Special Damages*

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.

The Claimant herein claims the following amounts as awards for special damages: K1,200,000.00 for funeral expenses; K65,000 being the cost of a bicycle; and K3,000 as costs incurred to procure a police report.

The Claimant also tendered ‘MN 8’ a cash sale from Sososo Transporters and General Suppliers amounting to K1,100,000.00 made out to the Association of Jehovah’s Witnesses and contains a description as follows: ‘being payment of hiring charges of coaster from Blantyre to Karonga and back for two days.’ Counsel for the Defendant contends that the Claimant cannot be awarded this sum because the receipt was made out to the Association of Jehovah’s Witnesses and not to the Claimant herself. Counsel for the Claimant countered this argument by saying her husband’s employer was helping her with the funeral arrangements. This is an accurate cultural position in Malawi. Employers, friends, neighbors and extended family members are most involved in making the funeral arrangements. It is extremely rare for immediate family members to be involved in the nitty gritty of funeral organizing. Further, most employers bear the burden of organizing funerals where one of their employees has passed on. This court, therefore, admits the cash sale from Sososo Transporters and General Suppliers as proof and will award the sum of K1,100,000.00 to the Claimant for funeral expenses.

Additionally, ‘MN 9’ is a handwritten list totaling K100,000 and purportedly listing the expenses incurred for food and other consumables during the funeral. This document has no identifying details, it is unclear what the list is, who the author is and who it is going to. For these reasons, no award will be made for the funeral expenses.

With respect to costs incurred to procure a police report, the Claimant tendered ‘MN 6’ which is a Malawi Government general receipt amounting to K3,000.00 and made out to the Association of Jehovah’s Witnesses for an Abstract Report. Based on the discussion in the preceding paragraph on funeral organizing, this Court will admit the Malawi Government General Receipt made out to the Association of Jehovah’s Witnesses as proof and will award the sum of K3,000 to the Claimant for procuring the police report.



The Claimant did not tender any evidence in support of the costs of replacing the bicycle. She stated during cross examination that the receipt they received upon purchase of the bicycle had been misplaced and she would not be able to produce it. Without proof of the same, no award will be made for replacement of the bicycle.

As stated above, special damages ought to be specifically claimed and proven. The Claimant failed to prove the amounts spent on purchase of the bicycle and on consumables for the funeral. However, the Claimant successfully claimed and proved that she spent K1,100,000.00 for funeral transportation and spent K3,000.00 to procure a police report. For these reasons, this Court makes an award of **K1,103,000.00 as special damages.**

#### DISPOSAL


##### *Summary*

The Claimant is therefore awarded **K1, 000,000.00** for loss of expectation of life, **K11,924,349.40** for loss of dependency, **K1,103,000.00** for special damages, and costs of the action (to be assessed by the Court).

Total award is **K14, 027,349.40** (fourteen million, twenty-seven thousand, three hundred and forty-nine-kwacha, forty tambala only)

Leave to appeal is granted. Each party may appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 16<sup>th</sup> day of October 2020 at the High Court sitting at Lilongwe.



C Mandala

**ASSISTANT REGISTRAR**