



IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL DIVISION  
CIVIL CAUSE NO. 1000 OF 2020

BETWEEN

SUSANA FRANK (Suing on her own behalf and on behalf of the estate of Naliranji Petulo (Deceased)).....CLAIMANT

AND

ATTORNEY GENERAL (MINISTRY OF AGRICULTURE).....DEFENDANT

**Coram:**

**Brian Sambo, Assistant Registrar**

Mr. G. Taumbe, of counsel for the Claimant

Defendant, absent and unrepresented

Mr. Kumwenda, Official Interpreter/ Law Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

The present assessment follows a default judgment obtained by the Claimant on 25<sup>th</sup> of August, 2021 for the following;

- i. Damages for loss of dependency
- ii. Damages for loss of expectation of life
- iii. Cost of action.

*Susana Frank (Suing on her own behalf and on behalf of the estate of Naliranji Petulo (Deceased), Civil Cause No. 1000 of 2020*

On 7<sup>th</sup> of September, 2021 I duly received evidence for the assessment of damages from the Claimant in the absence of the Defendant. The latter was duly served with the notice of assessment of damages but did not attend the hearing.

Facts of this matter are these; on or around the 19<sup>th</sup> June, 2019 the deceased was involved in a road accident which occurred at Makankhula Village near Linthepe II along Dedza-Lilongwe M1 Road, when Mr. Stronald Botomani an agent of the Defendant herein was driving motor vehicle registration number MG 928 AK/Toyota Corolla, where upon arrival at Makankhula Village near Linthepe II Bridge he hit the deceased who was crossing the road from right to the left side of the road with a bundle of firewood on her head. The deceased died on the spot due to severe head injuries.

It was stated during the evidence that the accident happened due to the negligence of the Defendant's driver.

The only issue present in this matter is the assessment of an appropriate level of damages under the two heads above.

Damages are the remedy that is open to a victim of the wrongful act of another. The wrongful party is the one responsible for compensating the victim. This is a way of trying to restore the position the victim would have been had the accident not happened. This is known as the principle of *restitutio in integrum*. Katsala J in the case of *George Kankhuni v Shire Buslines Ltd, Civil cause no 1905 of 2002*, as quoted in the case of *Chidoola v Chilunga and prime insurance co. Ltd, personal injury cause no 488 of 2014* said that the law demands that the plaintiff should be put in the same position as if he has not suffered the loss.

From the skeleton arguments, I noticed that the claimants were demanding MK14, 800, 000.00 covering both heads of damages. I consider the sum proposed much on the higher side regarding the fact there is no evidence employment; be it self or otherwise, on the part of the deceased. Not undermining the importance of her life to members of her family but going by the principle followed in these matters when assessing damages under the stated

*Susana Frank (Suing on her own behalf and on behalf of the estate of Naliranji Petulo (Deceased), Civil Cause No. 1000 of 2020*

heads. In order to avoid disparities, in my view, the safest way is to direct myself to decided cases in similar matters.

In *Lastone Chidule V ESCOM Ltd*, Personal Injury Cause No. 947 of 2015 the court on the 23<sup>rd</sup> day of May 2018, awarded the plaintiff the sum of MK2 300 000.00 as damages on this head for the death of 12-year-old Mphatso Chidule.

In *Charles Chokha v Nyambalo & Prime Insurance Company Limited*, Personal Injury No. 33 of 2017 the court on the 13<sup>th</sup> day of July 2018, awarded the plaintiff MK1 500 000.00 as damages for loss of expectation of life in respect to the deceased who died at the age of 5 years.

Whereas on the 7<sup>th</sup> day of August 2018. The court in *Alex Chigwale V ESCOM*, Personal Injury Cause No. 691 of 2014, awarded the plaintiff the sum of MK1 800 000.00 as damages for loss of dependency for the death of 12-year-old Yvonne Chingwale who was in standard 7.

In the present case, the deceased was 42 years of age. Life expectancy in Malawi is, currently at 66 years for females. I know there is no much evidence regarding the age of the deceased, and if I embrace the traditional computation, chances of making mistakes are too high.

Considering all circumstances above, and the case law provided, I award the Claimant **MK6, 000,000.00** being damages covering both heads. This whole sum is payable by the Defendant within 30 days from today.

Costs are for the Claimant, and shall be assessed separately if not agreed upon by the parties.

Made in chambers today Monday the 12<sup>th</sup> day of October, 2021.

Brian Sambo  
Assistant Registrar



*Susana Frank (Suing on her own behalf and on behalf of the estate of Naliranji Petulo (Deceased), Civil Cause No. 1000 of 2020*