



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 23 OF 2017**

**BETWEEN**

**DICKSON MULOWA** suing for himself and on behalf of other

beneficiaries of the Estate of **GOLDEN AMAN (Deceased)** ..... **1<sup>ST</sup> CLAIMANT**

**FOSTINO KANYADA** suing for himself and on behalf of other

beneficiaries of the Estate of **FRAVIANO KANYADA (Deceased)** ..... **2<sup>ND</sup> CLAIMANT**

**MADALITSO SELEMANI** ..... **3<sup>RD</sup> CLAIMANT**

**AND**

**SILILO MATCHADO** ..... **1<sup>ST</sup> DEFENDANT**

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

**CORAM : HER HONOUR MRS. E. BODOLE, ASSISTANT REGISTRAR**

Malijani, of Counsel for the Claimant

Counsel for the Defendants, absent

Mrs. Chilemba, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The Claimants brought proceedings against the Defendants claiming damages for pain and suffering, loss of amenities of life, loss of dependency, loss of expectation of life, funeral expenses, special damages for costs incurred in procuring Police,

medical and Death reports, and costs of the action. Judgment on liability was entered for the Claimant on 16<sup>th</sup> July, 2020. The matter has now come for assessment of damages.

### The Evidence

On or about 8<sup>th</sup> May, 2015 the 1<sup>st</sup> Defendant was driving motor vehicle registration number DZ 3751 Toyota Hiace minibus which was insured by the 2<sup>nd</sup> Defendant. He was driving the motor vehicle along Liwonde-Zomba road. When he reached Chinamwali Trading Centre he hit Golden Amani, Fraviano Kanyada and Madalitso Seleman, the 3<sup>rd</sup> Claimant.

As a result of the accident, Golden Amani and Fraviano Kanyada sustained head injuries and died at Zomba Central Hospital. They were aged 25 years and 18 years respectively at the time of their death.

The 3<sup>rd</sup> Claimant sustained fracture of the right foot and multiple bruises. He was treated at Zomba Central Hospital and a Plaster of Paris was applied and his wounds were dressed with iodine. He was given painkillers and antibiotics. He was treated as an outpatient from 8<sup>th</sup> May, 2015 to 11<sup>th</sup> June, 2016. He improved after treatment though he developed painful ankle due to the injury.

The Claimants are claiming a sum of K9,000.00 as costs for procuring Police reports, K4,000.00 as costs for procuring death reports, and K10,500.00 as costs for procuring the medical report.

The 1<sup>st</sup> and 2<sup>nd</sup> Claimants are also claiming funeral expenses. They did not adduce any evidence to support the claim.

### Issue for Determination

The only issue in this matter is the appropriate measure of the quantum of damages that the Claimants ought to be awarded in the circumstances.

### Applicable Law

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 Claimant in the position he would have been if he did not suffer the injuries he is claiming damages for - *Halsbury's Laws of England* 3<sup>rd</sup> Ed. Vol. II p.233 para

400. This principle was further enunciated in *Livingstone v Raywards Coal* [1880] AC 25 at 39 where Lord Blackburn said:

*'...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'*

Such damages are recoverable for both pecuniary and non-pecuniary losses. Pecuniary losses must be specially pleaded and proved while non pecuniary losses are assessed by the Court - *Mary Ntulungwa & 9 Others v Makandi Tea Estate* Personal Injury Cause No 844 of 2012.

Damages cannot be quantified in monetary terms by use of mathematical formula but use of experience and looking at awards made in decided cases of similar nature - *Wright v British Railway Board* [1983]2 AC 773. In reaching the final award for damages through looking at similar awards made, the Court considers the time the awards were made and currency devaluation - *Kuntenga and another v Attorney General* Civil Cause No 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life, loss of expectation of life and loss of dependency. These are assessed by the Court. Pecuniary loss is also called special damages and must be pleaded and proved, and that where a party has not proved special damages reasonable compensation in the circumstances can be awarded. - *Renzo Benetollo v Attorney General and National Insurance Co. Ltd* Civil Cause No. 279 of 1993.

#### Pain and Suffering

In damages for pain and suffering, the Court considers the physical experience of the nerves and mental anguish which comes as a result of the injury - *Lemon Banda and 19 others v Mota Engil Limited and General Alliance Insurance Limited* Personal Injury Cause Number 178 of 2012. In the *City of Blantyre v Sagawa* 16(1) MLR the Court stated that:

*“Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like.”*

It is clear from the evidence that the 3<sup>rd</sup> Claimant went through a lot of suffering and was in pain. He sustained fracture of the right foot and multiple bruises. A Plaster of Paris was applied and his wounds were dressed with iodine. He was given painkillers and antibiotics. He was treated as an outpatient from 8<sup>th</sup> May, 2015 to 11<sup>th</sup> June, 2016. He improved after treatment though he developed painful ankle due to the injury.

#### Loss of Amenities of Life

Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed - *Lemon Banda and 19 Others V Mota Engil Limited and General Alliance Insurance Limited* (supra).

No evidence was adduced to show how the injuries the Claimant sustained have lessened his enjoyment of life. No award is, therefore, made under this head of claim.

#### Award of Damages

In *Javious Enerst v Steven Levison and Prime Insurance Company Ltd* Personal Injury Cause No. 231 of 2015 the Claimant sustained fractured tibia of the left leg, multiple bruises, multiple cuts on the upper and lower extremities and a dislocated shoulder. On 23<sup>rd</sup> March, 2018, he was awarded a sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. In *Shadreck Fuduwick v James Balala Kachepa and NICO General Insurance Company Ltd* Personal Injury Cause No. 639 of 2018 the Claimant sustained right segmental femur fracture with spiral ends 2 degrees, soft tissue injury, bruises, general body pains and headache. He underwent open reduction and internal fixation, application of Plaster of Paris, and clutches to aid him whilst walking. The Claimant was still using clutches to aid him to walk. He was at high risk of developing arthritis. He was always in pain. He was admitted for 21 days and was treated as an out-patient for 6

days. He was awarded a sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement on 5<sup>th</sup> August, 2019.

It is clear that the injuries sustained by the Claimants in the above-cited cases are more than the injuries sustained by the 3<sup>rd</sup> Claimant in the present case. This Court, therefore, awards him a sum of K3,000,000.00 as damages for pain and suffering.

#### Loss of Expectation of Life

Damages for loss of expectation of life are claimable by a Claimant where his injuries have reduced his expectation of life – *Flint v Lovell* (1935) 1 KB 354. They are extended to actions which have survived for the benefit of the Deceased's estate and is thus available to the personal representatives of his estate. ☺

In assessing the damages, the thing to be valued is not the prospect of length of days but of a predominantly happy life- *Venham v Gambling* [1919] AC 157. The damages are supposed to be modest and the sum is supposed to be conventional one - *Chikoti v Attorney General* [2006] MWHC 28. In *Fayiness Nyalugwe (on her own behalf and on behalf of the beneficiaries of the Estate of Macdonald Nyalugwe v Prime Insurance Company Limited* Personal Injury Cause No. 416 of 2013 the Court on 26<sup>th</sup> June, 2017 awarded the Claimant a sum of K1,500,000.00 as damages for loss of expectation of life. In *Louis Kwalinga (Suing on his own behalf and as Administrator of the Estate of Solomon Kwalinga – Deceased)* Personal Injury Cause No. 210 of 2020 the Court on 5<sup>th</sup> March, 2021 awarded the Claimant a sum of K2,500,000.00 as damages for loss of expectation of life.

In the present case, the 1<sup>st</sup> Claimant and 2<sup>nd</sup> Claimant have been deprived the enjoyment of life with the deceased persons. This Court awards these Claimants a sum of K2,500,000.00 each as damages for loss of expectation of life.

#### Loss of Dependency

The foremost thing in this head is the amount of dependency. That is ascertained by deducting from the wages earned by the Deceased the estimated amount of his own personal and living expenses. In Malawi this is estimated at a third of the deceased's income - *Chikoti v Attorney General* (supra). Where the Deceased's monthly income is unascertained, the Court awards a sum equivalent to what a domestic worker earns – *Kenson Shapu v NICO General Insurance Company Limited* Civil

Cause Number 222 of 2007 (unreported). In calculating the damages, courts use the multiplicand and multiplier formula. The multiplicand is a figure representing the deceased's monthly earnings while the multiplier is the figure representing the estimated number of years the deceased would have lived if not for the wrongful death. The product of the multiplicand and the multiplier is multiplied by 12 representing the number of months in a year.

The deceased persons died aged 25 years and 18 years. The World Health Organization puts the life expectancy for males in Malawi at 56.7 years - [www.worldlifeexpectancy.com/malawi-life-expectancy](http://www.worldlifeexpectancy.com/malawi-life-expectancy). The Court takes into account the fact that there would have been other factors that would have shortened the Deceased's life. I would have to adopt a multiplier of 20 for the 1<sup>st</sup> Claimant and a multiplier of 25 for the 2<sup>nd</sup> Claimant. There is no evidence as to how much the deceased persons were earning. The minimum wage in 2015 was K25,000.00 per month. There have been several revisions of the minimum wage since 2015 and using them would be cumbersome. So, this Court will use the current minimum wage or domestic worker's earnings which is K50,000.00 as a multiplicand. Loss of dependency would thus be calculated as follows:

For the 1<sup>st</sup> Claimant:  $K50,000.00 \times 20 \times 12 \times 2/3$ . The award under this head would, therefore, be K8,000,000.00.

For the 2<sup>nd</sup> Claimant:  $K50,000.00 \times 25 \times 12 \times 2/3$ . The award under this head would, therefore, be K10,000,000.00.

### **Special Damages**

Special damages are supposed to be pleaded and proved. The 1<sup>st</sup> Claimant and the 2<sup>nd</sup> Claimant did not claim any amounts that they had expended as funeral expenses. They also did not adduce any evidence to show how much they spent. This Court, therefore, does not make any award as regards this claim.

There is no evidence to show that the Claimants expended the amount they are claiming for procuring the death and medical reports. If some money had been spent, that should have been shown to the Court. However, this Court is mindful of the fact that the Claimants had to travel to the hospital from home in order to obtain the death and medical reports. Reasonable compensation for that is fair and just.

The 1<sup>st</sup> Claimant and the 2<sup>nd</sup> Claimant are, therefore, awarded the sum of K1,500.00 each as costs for procuring the death report. The 3<sup>rd</sup> Claimant is awarded a sum of K5,000.00 for procuring the medical report. All Claimants are awarded a sum of K3,000.00 each as costs for procuring the Police report.

**Conclusion**

The 1<sup>st</sup> Claimant is awarded a total sum of K10,504,500.00 as damages. The 2<sup>nd</sup> Claimant is awarded a total sum of K12,504,500.00 as damages while the 3<sup>rd</sup> Claimant is awarded a total sum of K3,008,000.00 as damages. They are further awarded costs of the proceedings to be taxed at a later date if not agreed by the parties. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Pronounced in Court this 27<sup>th</sup> day of August, 2021 at Blantyre.



**EDNA BODOLE (MRS.)**

**ASSISTANT REGISTRAR**