

The Judiciary
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NUMBER 343 OF 2018

Between;

CHRISSY EDWARD (*suing as wife of EDWARD MAUDZU (Deceased)*)

and on behalf of the Dependents of the Deceased) **CLAIMANT**

-AND-

FELIX TCHALE..... **1ST DEFENDANT**

UNITED GENERAL INSURANCE COMPANY LIMITED..... **2ND DEFENDANT**

THE ATTORNEY GENERAL (MALAWI PRISON SERVICE)..... **3RD DEFENDANT**

ORDER ON ASSESSMENT OF DAMAGES

The claimant commenced the present action against the named defendants claiming damages for loss of expectation of life, damages for loss of dependency, MK3,000.00 being the costs for procuring a police report and costs of the action. On 24th January 2022, the claimant obtained a default judgement with respect to all the claims.

The court proceeded to set down the matter for a hearing on assessment of damages whose notice was duly served on the defendants' legal practitioners. However, the defendants failed to avail themselves on the day scheduled for the assessment despite due service of the notice. Nevertheless, the court proceeded with the hearing. The claimant testified that she is the deceased's widow. It was on 24th August 2017 when her husband was lawfully walking along the Ngabu-

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Nsanje road when he was hit by a vehicle which was being negligently driven by the 1st defendant. The said vehicle belonged to the 3rd defendant and insured by the 2nd defendant. Due to the impact, the deceased sustained severe injuries and was pronounced dead on the spot. At the time, he was 39 years old. Finally, she stated that the deceased is survived by her (the widow) and three children. A police report and a death report was tendered in evidence and was marked CE1 and CE2 respectively.

It is trite that damages for personal injuries are awarded for the plaintiff's both pecuniary and non-pecuniary losses. The non-pecuniary losses include pain and suffering, loss of amenities of life, loss of dependency 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. See; **Cassel and Co v Broom [1972] AC 1027, Tembo v City of Blantyre and The National Insurance Co Ltd civil cause No. 1355 of 1994 (unreported)**.

When considering damages for loss of expectation of life, the starting point is the decision in **Mbaisa v. Ibrahim Ismail Brothers** in which the court stated that an action of this nature is brought for the benefit of the estate and must be brought by the personal representative only. In **Binwell Tembetani & Others v. Malasha Holdings Limited t/a Malasha Bus Company & 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 representatives. The claimant in the present matter testified that she is a widow to the deceased and she commenced this action on her behalf and on behalf of other dependents (children) of the deceased. Without doubt, the claimants are entitled to benefit from the estate of the deceased being members of the immediate family. As such they qualify to be personal representatives of the deceased. They are therefore entitled to bring up this claim.

The court is mindful that in assessing damages for loss of expectation of life, the thing to be valued is not only the prospective days but includes days of a predominantly happy life. See; **Venman v. Gambling [1919] AC 157**. The damages are supposed to be modest and the sum is supposed to be a conventional one. See; **Chikoti v. Attorney General [2006] MWHC 28**.

In **Fayiness Nyalugwe (suing on her own behalf & on behalf of the beneficiaries of the Estate of Mcdonald Nyalugwe, Deceased) v. Prime Insurance Company Limited Personal Injury Cause No. 416 of 2013**, the court awarded the sum of MK1, 500,000.00 as damages for loss of expectation of life.

In **Magret Tomas (suing on her own behalf and on behalf of the dependents of the estate of Tomas Chidothe-deceased) vs Nickson Jaenda & Prime Insurance Company Limited Civil Cause Number 578 of 2018 (unreported)** the Court on 11 January 2019 awarded the sum of MK 2, 000, 000.00 as damages for loss of expectation of life.

In **Florence Chipukunya (suing on her own behalf and on behalf of other beneficiaries of the estate of Edith Alubino, Deceased) vs Daniel Tembo and Prime Insurance Company Limited, Personal Injury Cause Number 568 of 2018 (unreported)**, the Court on 3 April 2019 awarded the sum of MK 1, 800, 000.00 as damages for loss of expectation of life.

In the present matter, counsel for the claimant proposes the sum of MK3, 000, 000.00 as damages for loss of expectation of life. He calls upon the court to have recourse to **Esitere Chimbalanga (suing as mother of Yohane Maulidi (deceased) and other dependents of the deceased) v. Sydney Kampira & Britam Insurance Company Limited Personal Injury Cause No. 557 of 2019**, the deceased was 38 years old and the court awarded MK2, 000, 000.00 as damages for loss of expectation of life. In **Lourent Gontha (on behalf of Davie Gontha) v. Alfred Assani, Ulemu Bus Service Company Limited & Prime Insurance Company Limited Personal Injury Cause No. 691 of 2019**, the deceased was aged 39 and the court awarded MK2, 000, 000.00 as damages for loss of expectation of life.

The court having looked at the prevailing circumstances in this matter and authorities cited above, it is its finding that the sum of **MK2, 000, 000.00** would be fair and adequate to compensate the claimant for loss of expectation of life.

On loss of dependency, in **Makifale Dimingu & Others v. the Attorney General Personal Injury Cause No. 749 of 2021**, 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 the 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 v. Sabot Hauliers 15 MLR 373 and Mallet v. 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..... Whatever product there is a reduction of one third representing the portion the deceased would have presumably expended on purely personal needs.

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In **Chikoti v. Attorney General (supra)**, it was stated that where the deceased's monthly income is unascertained, the court awards a sum equivalent to what a domestic worker earns. In **Florence Chipukunya (suing on her own behalf and on behalf of other beneficiaries of the estate of Edith Alubino, Deceased) vs Daniel Tembo and Prime Insurance Company Limited (supra)** the Court adopted the minimum wage as the multiplicand and pegged the life expectancy at 59.


In the present case, the deceased died at age of 39 and was enjoying a vibrant, healthy and predominantly happy life. Counsel proposes that the court adopts a multiplier of 23. We find no fault on that. Besides, ~~the court~~ (visited on 20/07/2022) estimates the country's life expectancy to be at 65.18 years. The deceased's monthly income has not been disclosed. The court will therefore adopt the minimum wage prevailing at the time of the deceased's death which was MK 25, 000.00. Therefore, using the multiplicand and multiplier formula the award under this head will thus be: $\text{MK } 25, 000.00 \times 23 \times 12 \times 2/3 = \text{MK } 4, 600, 000.00$

The claimant is also awarded the sum of MK3, 000.00 being the cost of procuring the police report.

The court, therefore, awards a total sum of **MK6, 603, 000.00**.

Costs of the action are for the claimant to be assessed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 20TH DAY OF JULY, 2022


Ibrahim Hussein

ASSISTANT REGISTRAR

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