



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 948 OF 2016**

**BETWEEN**

**CHARLES CHIPETA [Father and guardian of**

**RAYMOND CHIPETA (Deceased)] ..... CLAIMANT**

**AND**

**THE ATTORNEY GENERAL ..... DEFENDANT**

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

Kamkwasi, of Counsel for the Claimants

Counsel for the Defendant, absent

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimant brought proceedings against the defendant claiming damages for loss of companionship/dependency, loss of expectation of life, loss of resources in maintaining and transporting the deceased from Ekwendeni to Zomba to seek medical help, and costs of the action. Judgment on liability was entered for the

claimant on 28<sup>th</sup> November, 2017. The matter has now come for assessment of damages.

### The Evidence

The claimant is the father of Raymond Chipeta (deceased). On 5<sup>th</sup> June, 2016 his son was admitted at Zomba Mental Hospital. He had transported the deceased from Ekwendeni to Zomba for medical assistance. The deceased died on the 5<sup>th</sup> July, 2016 in an accident that occurred at the hospital. The deceased was aged 32 years at the time of his death.

Following the tragedy, the claimant was filled with grief and has lost the companionship of the deceased. He is, therefore, seeking damages for loss of companionship/dependency and expectation of life, loss of resources in maintaining and transporting the deceased from Ekwendeni to Zomba, and costs of the action.

### General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983] 2 AC 773**. The court, however, 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 loss of expectation of life, loss of dependency etc. These are assessed by the court. Pecuniary loss must be pleaded and proved - **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC)



### 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 **Jabulani Mbesa [on his behalf and on behalf of dependents of Mrs. Neles Linly Mbesa (deceased)]** Personal Injuries Cause No. 117 of 2014 the deceased died aged 59 years. The court made an award of K900,000.00 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 World Health Organization puts the life expectancy for males in Malawi at 56.7 years - [www.worldlifeexpectancy.com/malawi-life-expenctancy](http://www.worldlifeexpectancy.com/malawi-life-expenctancy). The court takes into account the fact that there would have been other factors that would have shortened the deceased's life.



### Analysis

The claimant lost his son as a result of the accident. The deceased son had lived a predominantly happy life with his family. The beneficiaries of the deceased estate have been deprived the enjoyment of such a life. In view of the decided cases herein cited, and in view that the awards were made some time back, I award the claimant a sum of K1,500,000 as damages for loss of expectation of life.

The claimant's son was aged 32 years at the time of his death. He might have lived into his 50s had he not died. This court takes into consideration the statistics on life expectancy in Malawi that pegs it to around the range of 56.7 years for men. The deceased possibly had around 24 more years to live had it not been for his death. That figure of 24 years shall be reduced to cater for eventualities of life that may have reduced his life expectancy in any event. This court makes a reduction of years and so adopts the multiplier of 16. The minimum wage or domestic worker's earnings which is K25,012.00 would be used as a multiplicand since there is no evidence as to how much the deceased was earning. The award under this head would, therefore, be  $K25,012.00 \times 12 \times 16 \times 2/3$  which is K3,201,536.00.

### Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount he is claiming for loss of resources in maintaining and transporting the deceased to Zomba from Ekwendeni to seek medical help. If some money had been spent, that should have been shown to the court. This claim is, therefore, dismissed.

### Conclusion

The claimant is awarded a total sum of K4,701,536.00. He is also awarded costs of the action.

Pronounced in court this 16th day of May, 2018 at Blantyre.

**E. BODOLE (MRS)**

**ASSISTANT REGISTRAR**