



MALAWI JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**



PERSONAL INJURY CAUSE NUMBER 659 OF 2011

BETWEEN:

ANNIE CHILINGA suing for and on behalf of the Beneficiaries
of the estate of FRIDAY NYOPOLA

(Deceased)..... **PLAINTIFF**

AND

DUNCAN NYALUGWE..... **1st DEFENDANT**

PRIME INSURANCE COMPANY LIMITED..... **2nd DEFENDANT**

CORAM: N USIWA USIWA, DEPUTY REGISTRAR

Mr Malijani of Counsel for the Plaintiff

Mr Alide Counsel for the Defendant

Mr C Cossam..... Official Interpreter

ORDER ON ASSESSMENT OF DAMAGESP

This is an Order on Assessment of Damages.It follows a court judgment on liability dated 11th November, 2014. The court is now moved to determine and assess how much compensation is payable to the plaintiff.

BRIEF FACTS

The plaintiff is an adult female and brought this action on behalf of the beneficiaries of the estate of **FRIDAY NYOPOLA** (Deceased).



On or about the 14th September, 2009, the deceased then aged 36 was lawful walking on the nearside dirty verge at Chifundo undo near Mpemba along the Blantyre –Chikwawa Road when he was hit to death by a motor vehicle Toyota Hiace Mini-bus Registration Number BN 4268.

At the material time the said motor vehicle was driven by the 1st Defendant and insured by the 2nd Defendant.

The said accident and death were caused by the negligent driving of the 1st Defendant per this court judgment dated 11th November, 2014 and the 2nd Defendant is liable to pay compensation to the plaintiffs under the Road Traffic Act hence the present assessment.

ISSUES

The only issue at hand is how much compensation is payable to the plaintiffs.

LAW AND ASSESSMENT

The fundamental principle which underlies the whole law of damages, in whatever area they are awarded, is the principle of compensation. What this means is that the damages to be recovered must in money terms be more and no less than the plaintiff's actual loss. Of course the principle is no more than a platitude. The principle was laid down by Blackburn in the classic case of ***Livingstone vs Rawyards Coal Company(1880) 5A.C. 25***

A person who has suffered damage due to the negligence of another is entitled to recover damages. The aim of awarding damages is to compensate the injured party as nearly as possible as money can do: ***Livingstone vs. Raw yards Coal Company Supra.***

