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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 29 OF 2017

**BETWEEN**

DAVIE MASTON FRANSIKU (Suing on his own behalf as father of

the deceased and on behalf of other dependents of Ruth Maston

(Deceased)).....PLAINTIFF

**AND**

EDWARD BANDA.....1<sup>st</sup> DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2<sup>nd</sup> DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA**

Maere- of Counsel for the plaintiff

Tandwe- of Counsel for the defendants

Chitsulo- Court Clerk and Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

The claimant in this matter took out a writ of summons which was issued on 12<sup>th</sup> of January 2016 against the defendants claiming damages for loss of dependency, loss of expectation of life, special damages and costs of this action. The matter came for mediation on 22<sup>nd</sup> of May 2018 before Honourable Justice Potani. The defendants did not avail themselves for the same. The court made an order that the defence be struck

out and judgment be entered in favour of the claimant and that the matter proceeds to assessment of damages. This is the court's order on assessment of damages pursuant to the said judgment on liability.

The background of the matter according to the Statement of Claim is that the plaintiff was at all material times the father of the deceased Ruth Maston. On about the 19<sup>th</sup> of March 2016, the deceased was a passenger in the motor vehicle registration number KU5462 Toyota Hiace Minibus which was being driven by the 1<sup>st</sup> defendant. The mini bus was heading to Kasungu from Lilongwe. Upon reaching Mnkhangha turnoff the 1<sup>st</sup> defendant negligently drove the said Toyota Hiace minibus that the rear offside tyre burst and the driver lost control of the vehicle and it swerved and overturned before resting at the road side. As a result of the impact, the deceased sustained serious head injuries and consequently died at the spot of the accident. It is against this background that the plaintiff brings this action.

The matter was set for 18<sup>th</sup> of May 2018 for assessment of damages. The plaintiff was the sole witness for his case. He adopted his witness statement in which he stated that his daughter Ruth Maston was involved in an accident which took place on the 19<sup>th</sup> of March 2016 at Mnkhangha along Lilongwe Kasungu Road. She was pronounced dead at Dowa District Hospital. She died at the age of 26 and was a civil servant working as a nurse/midwife technician at Bowe Health Centre in Dowa. She was the sixth born in a family of eight. Her salary was K105,902.50 per month and exhibits her pay slip marked "DFM1". He further stated that due to her death he has been deprived of the support that she used to provide him with when she was alive. He is a retired civil servant and relies on assistance coming from his children. He further stated that he invested a lot in this child and was looking forward to her having a bright future. The ministry of Health with an ambulance and a coaster and a coffin. They also hired vehicles to ferry relatives and other people to Mulanje. The hired vehicles cost K100,000.00, K150,000.00 and K400,000.00. Further he expended K100,000.00 in buying food and also K10,000.00 for a Police Report and Medical report.

Such was the evidence for the claimant. The defendants on the other hand did not parade any witness. However, they sought to rely on a witness statement by Tamika Mhone bearing an attachment of an Insurance Policy. On the other hand, Counsel for the claimant filed supplementary submissions challenging the admissibility of the witness statement in that it was not supported by a sworn statement verifying its contents contrary to the dictates of o.18 r.2(1)(a) of the Courts (High Court) (Civil Procedure) Rules 2017. Indeed, a perusal of the record indicates that the witness statement is not verified by a sworn statement. I take note that o.18 r. 4 of the CPR 2017 states that where the maker of a witness statement fails to verify the witness statement by a sworn statement the Court may direct that it shall not be admissible as evidence. I have no choice but to hold that the said witness statement does not comply with the rules. Looking at the importance of the document in question, I thought the defendants would atleast



parade the witness to tender the document having taken oath. I shall disregard the witness statement and its attachment.

Reaching this far, I must state that this court has been called upon to make a determination on a quantum that would reasonably compensate the claimant for the damages and losses suffered in this case.

The law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of *Livingstone v. Rawyards Coal Company* (1880) 4 AC 25 in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, 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 loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

The claim herein is for loss of expectation of life and loss of dependency. It is trite law that once a person dies as a result of the negligence of another, the dependants or relations of the deceased are entitled to compensation from the tortfeasor. The award to be made as damages is arrived at using the same principles that apply in claims for personal injuries. Just like for pain and suffering, it is an aspect that cannot be quantified in monetary terms with any known mathematical formula. To arrive at such damages, reference is made to cases of comparable nature.

In the present case, under damages for loss of expectation of life, Counsel for the plaintiff cited the case of **Annie Chilinga (suing for and on behalf of the beneficiaries of the estate of Friday Nyopola) V Prime Insurance Company Limited**, Personal Injury Cause no. 659 of 2011, in which the court awarded the sum of K1,500,000.00 as damages for loss of expectation of life. The award was made on 7<sup>th</sup> June 2016. Counsel therefore proposes a sum of K2,000,000.00 under this head.

On the other hand, Counsel for the defendants calls upon the court to have recourse to the case of **Ukayendasiyaphazi Dickson Famba (suing as administrator of the Estate of Dickson Famba, deceased) v C. Mukawa and Prime Insurance Company Limited**, Personal Injuries Cause No. 2014 where the court awarded K900,000.00 for loss of expectation of life. The award was made on the 6<sup>th</sup> of May 2016. He also cites the case of **Patrick Mlaka (suing on behalf of Tionenji Mlaka, deceased) v Moses salimu and Prime Insurance Company**, Personal Injuries Cause No.485 where the plaintiff was awarded K900,000.00 for loss of expectation of life. The award was made on the 14<sup>th</sup> of August 2015.

The relevant factor is that the deceased herein died aged 26 years. The life expectancy in this country was pegged at around 57 [www.worldlifeexpectancy.com/malawi-life-expectancy](http://www.worldlifeexpectancy.com/malawi-life-expectancy). The deceased herein might possibly have reached her 40s had it not been for her death herein. She possibly had about 20 years to live. This court therefore awards the sum of K2,000,000.00 as damages for loss of expectation of life in the circumstances of the instant case.

Under loss of dependency, the court has taken note of the cases **Mbila and another v Attorney General** 16[1] MLR 313 and also **Banda and Chibuku Products Ltd v Chunga** 12 MLR 283 on how damages for loss of dependency are calculated. It is trite law that in this head of damages, courts have developed a formula which is conveniently referred to as the “Multiplicand and Multiplier”. The multiplicand is the figure representing the estimated number of years the deceased would have lived if not for the wrongful death. 12, representing the number of months in a year, is multiplied by the product of the multiplicand and the multiplier and recent judicial pronouncements have pegged life expectancy at 57 years. Whatever the product is reduced by one third representing a portion presumably used by the deceased on purely personal needs. See also **Kundwe v Stagecoach Malawi Limited**, 16[2] MLR 556.

Counsel for the plaintiff contends that the deceased, in the present case died at the age of 26 years. He opines that the multiplier of 24 would be reasonable considering the vicissitudes of life. On the other hand, Counsel for the defendants proposes a multiplier of 15 having discounted 5 years. I take note that the death report indicates that the claimant’s daughter died at the age of 25. In my opinion, if the life expectancy is to be pegged at 57 years then the claimant had 22 more years to live. Deducting some years for the said vicissitudes of life I opt for a multiplier of 20. Therefore using the multiplier/multiplicand formula loss of dependency would, thus, be:

$$(MK105,902.50 \times 20 \times 12 \times 2/3) = \mathbf{K16,944,400.00}$$

The claimant also prays for K760,000.00 being payment of funeral expenses such as transport and some common transactions that are expected at funerals. Notably from the statement of claim, these were not pleaded. Presumably, the default judgment was for damages featured in the statement of claim which are loss of expectation of life, loss of dependency and special damages being costs of obtaining a police report. I think it is only proper that the award should not be made out of benevolence even though there is no doubt that the expenses were indeed incurred.

In summary, the claimant is awarded as follows:

Loss of expectation of life	- K2, 000, 000.00
Loss of dependency	- K16, 944, 400.00

In total, the claimant is awarded **K18, 944, 400.00**.

The claimant is further awarded costs of this action to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 22<sup>nd</sup> DAY OF AUGUST 2018



**WYSON CHAMDIMBA NKHATA**

ASSISTANT REGISTRAR