



**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NO. 96 OF 2011**  
**BETWEEN**

**JOSENI NAMOKO (FATHER OF**  
**THE LATE FOSTER NAMOKO ..... CLAIMANT**  
**AND**  
**MACDONALD MASAMBA ..... 1<sup>ST</sup> DEFENDANT**  
**PRIME INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

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

Mumba, of Counsel for the Claimant

Stenala, of Counsel for the Defendants

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimant brought proceedings against the defendants on behalf of the estate of Foster Namoko (deceased) claiming damages for loss of dependency, loss of expectation of life, special damages for costs incurred in procuring police and medical reports, and costs of the action. Judgment on liability was entered for the claimant on 19<sup>th</sup> December, 2018. The matter has now come for assessment of damages.

## The Evidence

The claimant is the father of the deceased. The deceased was a passenger in motor vehicle registration number PE 1400 Hino Lorry 5 Tonner on 8<sup>th</sup> November, 2009. The motor vehicle was insured by the 2<sup>nd</sup> defendant. The motor vehicle overturned and as a result the deceased lost his life. His death is a major loss to his family. He was aged 19 years at the time of his death. He was a student and at the time of his death, he had been selected to pursue his studies in Form 1 at Mulanje Secondary School.

The claimant is claiming damages for loss of dependency, loss of expectation of life, special damages in the sum of K2,000.00 and K1,000.00 as costs for procuring police and death reports respectively.

## Applicable Law and Analysis

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.

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 pain and suffering, loss of amenities of life and disfigurement. 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.

## 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 (suing on her own behalf and on behalf of the beneficiaries of the Estate of Mc Donald Nyalugwe, Deceased) v Prime Insurance Company Limited* Personal Injury Cause No. 416 of 2013 the court on 26th June, 2017 awarded the sum of K1,500,000.00 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 No. 222 of 2007. 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 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, I award the claimant a sum of K1,500,000.00 as damages for loss of expectation of life.

The deceased was aged 19 years at the time of his death. He was in the prime of life. 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 37 more years to live had it not been for his death. That figure of 37 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 12 years and so adopts the multiplier of 25. The deceased was a student so this court would use the minimum wage or domestic worker's earnings which is K25,012.00 as a multiplicand. The award under this head would, therefore, be  $K25,012.00 \times 12 \times 25 \times 2/3$  which is K5,002,400.00.

Special damages are supposed to be pleaded and proved. The claimant proved that he had spent K3,000.00 in order to procure the Police and medical reports. This court is mindful of the fact that the amount was spent in 2011. With the lapse of time and currency devaluation, the claimant is, therefore, awarded a sum of K6,000.00.

#### Conclusion

The claimant is awarded a total sum of K6,508,400.00. He is also awarded costs of the action.

Pronounced in court this 29<sup>th</sup> day of March, 2019 at Blantyre.



**E. BODOLE (MRS.)**

**ASSISTANT REGISTRAR**