



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 309 OF 2017

BETWEEN:

AMINI SAIDI.....CLAIMANT

and

MADALITSO MWANIKHA ..... 1<sup>ST</sup> DEFENDANT

RANNIE VOKHIWA.....2<sup>ND</sup> DEFENDANT

PRIME INSURANCE CO. LTD.....3<sup>RD</sup> DEFENDANT

**CORAM:** Texious Masoamphambe, Deputy Registrar

*Mr Kambale*, of Counsel for the claimant

*Mr Phiri*, of Counsel for the defendant

*Miss Mada Galafa*, Court Clerk/Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

This is the order on assessment of damages following a judgment entered in favour of the claimant dated 19<sup>th</sup> December, 2019. The claimant, the father of Halima Saidi, deceased, claims damages for loss of expectation of life, loss of dependency, **K3, 000.00** as cost of police report, **K5, 000.00** as cost of death report, **K75,000** as funeral expenses and costs of the action. The facts aver that 26<sup>th</sup> July 2016, the deceased was a lawful passenger in a motor vehicle registration number **MJ 7793** Nissan Caravan which was being driven by the 1<sup>st</sup> defendant. Upon arrival at Chisombezi

Bridge along Mugabe Highway, the 1<sup>st</sup> defendant lost control of the said motor vehicle consequent to which the vehicle swerved to the extreme near side and overturned. As a result of the accident, Halima Saidi sustained severe head injuries and died on the spot. The said vehicle was insured by the 3<sup>rd</sup> defendant.

In evidence, the claimant adopted his witness statement where he explained that the deceased was 24 years of age at the time of her death. He further explained that the deceased was in good health at the time of her death. She was a bright student at Nguludi Secondary School waiting to sit for her form 4 exams. The claimant produced and exhibited a copy of her MANEB ID. The claimant stated that the deceased was survived by her two siblings and two parents being the claimant and the mother. He lamented that the claimant has lost her companionship and help which the claimant used to receive from the claimants contribution in various ways. The claimant said that the family had to incur expenses in form of ferrying the deceased's remains from Queen Elizabeth Central Hospital mortuary for burial at her home village in Nguludi and other expenses such as food and other logistics in furtherance of the funeral service.

During cross examination, the claimant told the court that the deceased was 24 years at the time of her demise and that she was helping the claimant with household chores. The claimant was left with six children. Out of those six children, two were depending on the deceased as she used to make *mandasi* and sell.

Counsel for the claimant submitted that the claimant should be awarded a sum of **K2, 000,000.00** as damages for loss of expectation of life. Counsel cited a case of **Malingaliro Elia vs Paramount Engineering Company, Personal Injury Cause No. 215 of 2017** where the claimant was awarded a sum of **K2, 000,000.00** on 14<sup>th</sup> August 2018. In addition, Counsel for the claimant also invited the court to award the claimant the sum of **K10, 920,000.00** as damages for loss of dependency. Counsel for the claimant concluded by asking the court to award the claimant special damages as pleaded.



On the other hand, Counsel for the defendant submitted that the claimant should be awarded the sum of **K800, 000.00** as damages for loss of expectation of life. Counsel cited a case of **Jackson Chimbenje vs Annie Misomali and Another, Personl Injury Cause No. 91 of 2013** where the claimant was awarded a sum of **K500, 000.00**. Counsel also submitted that the claimant should be awarded a sum of **K2, 800,000.00** as damages for loss of dependency. On special damages, Counsel stated that the award should not be made on that head since no receipts were produced to substantiate the same.

### ***Loss of Expectation of Life***

In the case of **Aaron Amosi (on his own behalf and on behalf of the estate of Teleza Amosi) and Lanjesi Lile vs Prime Insurance Company Limited Personal Injury Cause No. 133 of 2013 PR (unreported)**, the Court stated that the claim is based on the notion that due to the injuries suffered the deceased would not have enjoyed his life to the same extent as when he was in good health. This was also propounded in the case of **Benham vs Gambling (1941) ALLER 7**. The damages are non- pecuniary and the Court use common sense, reference being had to the earliest awards without actually assigning value to the years lost. All relevant factors such as the age of the individual, prospects of life and life expectancy are to be considered. It must be remembered that human life is not continually enjoyable so as to deserve compensation for any shortening thereof on quantitative basis. Life's vicissitudes are therefore to be taken into consideration too.

In **Fayiness Nyalungwe vs Prime Insurance Company, Civil Cause No 416 of 2013**, the Court awarded **K1, 520,000.00** to the claimant for loss of expectation of life for the deceased who died at the age of 25. In **Chipeto vs Nyirenda, Civil Cause No. 2135 of 2010**, the court awarded the claimant a sum of **K 1,000,000. 00** as damages for loss of expectation of life. In the case of **Annie Chilinga vs Duncan Nguluwe, Civil Cause No. 659 of 2011**, the court awarded **K 1,500,000.00** for loss of expectation of life. In **Eshter Bernad Zawanda (Suing on behalf of the estate and dependants of Isaac Benard) vs Dr. Titha Dzowera and CHAM Personal Injury Cause No. 426 of 2018**, the deceased died at the age of 29. On 22<sup>nd</sup> March 2019 the Court awarded a sum of **K1, 500,000.00** as damages for loss of expectation of life.

Looking at the authorities that have been cited above, the quantum of damages that Courts award under this head ranges from **K1, 000,000.00** to **K2, 000,000.00**. The deceased herein had a happy life and had been enjoying her life at the time of her death. I find that awarding **K800, 000.00** as submitted by Counsel for the defendant is on the lower. I have also considered the submissions by Counsel for the claimant and award a sum of **K2, 000,000.00** as damages for loss of expectation of life.

### ***Loss of Dependency***

In **Makifale Dimingu and others vs The Attorney General** personal injury cause No. 749 of 2012. (High Court) (Unreported), 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 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 vs Sabot Hauliers 15 MLR 373 and Mallet vs Mc Monagle, [1970] AC 166 at 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. As rightly pointed out by the 6th plaintiff in order to arrive at the level of dependency, the multiplicand is multiplied by the multiplier and the figure is 12 representing the number of months in a year. Whatever the product there is a reduction of one third representing the portion the deceased would have presumably expended on purely personal needs.'*

Counsel for the claimant stated that life expectancy in Malawi is now pegged at 65. In **Eshter Benard Zawanda** case the Court used 55 years as life expectancy in Malawi. In **Malingaliro** case the Court used 58 years as life expectancy in Malawi. Be as it may, I adopt 26 as the multiplier after considering the vicissitudes of life and **K35, 000.00** as the multiplicand. I therefore award the claimant a sum of **K7, 280,000.00** as damages for loss of dependency.

### *Special Damages*

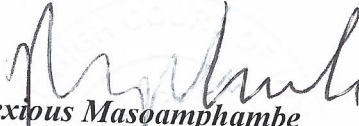
The rule is well settled that special damages have to be specifically pleaded and strictly proved. See **Phiri vs Daudi 15 MLR 404**. This means the plaintiff must produce receipts to prove the amount of special damages. Cost of police and death report have not been proved on the balance of probabilities.

### *Funeral Expenses*

**Section 6 of the Statute Law Miscellaneous (Provisions Act)** states that the Court may award damages in respect of the funeral expenses of the deceased person, if such expenses have been incurred by the parties for whom and for whose benefit the action is brought. Taking into account that the claimant incurred some expenses I award the claimant **K50, 000.00** as funeral expenses.

In total I award the claimant a sum of **K9,330,000.00**. Costs are for the claimant.

Made in chambers on this 6<sup>th</sup> day of May 2020 at Blantyre.

  
**Texipus Masoamphambe**  
**DEPUTY REGISTRAR**