



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 811 OF 2016**

**BETWEEN**

**SAMUEL CHINYANI (as brother on his own behalf and on**

**behalf of all dependants of MAXWELL CHINYANI, Deceased ..... 1<sup>ST</sup> CLAIMANT**

**ANTONIO ELAZIO ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**J.G. NDELEMANI ..... 1<sup>ST</sup> DEFENDANT**

**PRIME INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

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

Nthewa, of Counsel for the Claimant

Counsel for the Defendant, absent

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimants brought proceedings against the defendants claiming damages for personal injuries, costs for procuring death, medical and Police reports, and costs

of the action. Default Judgment on liability was entered for the claimants on 27<sup>th</sup> March, 2017. The matter has now come for assessment of damages.

### The Evidence

The 1<sup>st</sup> claimant commenced this action on his own behalf and on behalf of the beneficiaries of the estate of Maxwell Chinyani, deceased. The 2<sup>nd</sup> claimant commenced this action on his own behalf. On 4<sup>th</sup> April, 2016 the deceased and the 2<sup>nd</sup> claimant were lawful passengers on board motor vehicle registration number CZ 5551 Toyota Hiace minibus. It was being driven by the 1<sup>st</sup> defendant from the direction of Limbe heading towards Mwanza. Upon arrival at Kabano village, the rear offside tyre got burst and the 1<sup>st</sup> defendant lost control of the motor vehicle. It then served to the extreme nearside of the road where it overturned three times.

As a result of the accident, the deceased sustained injuries from which he died. The dependants of the deceased and his estate have suffered loss and damage. The deceased was aged 33 years and a businessman at the time of his death. He was enjoying a healthy and happy life.

The 2<sup>nd</sup> claimant sustained closed supracondylar fracture of the right humerus, deep bruised wound on the right forearm, and a deep bruised wound at the back. Wound debridement was done in the operating theatre. He was admitted in hospital from 4<sup>th</sup> April, 2016 to 25<sup>th</sup> April, 2016. As a result of the injuries the 2<sup>nd</sup> claimant sustained, he experienced a lot of pain and suffering at the time and even after the accident. He has a disfigured and hypertensive scar on the right elbow, stiffness of the right elbow and reduced function and scar on his back.

Each claimant spent a sum of K13,500.00 in procuring Police, medical or death reports.

The 1<sup>st</sup> claimant is, therefore, seeking damages for loss of expectation of life and loss of dependency. The 2<sup>nd</sup> claimant is seeking damages for pain and suffering, loss of amenities of life, and disfigurement. Both claimants are each claiming the sum of K13,500.00 as costs for procuring Police and death reports, 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.

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded 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, pain and suffering, loss of amenities of life, disfigurement, 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.

## 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 claimant a 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-expectancy](http://www.worldlifeexpectancy.com/malawi-life-expectancy). The court takes into account the fact that there would have been other factors that would have shortened the deceased's life.

### Pain and Suffering

Pain and suffering is attributable to the plaintiff's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced – ***Sakonda v S.R. Nicholas*** Civil Appeal Cause No. 67 of 2013.

### Loss of Amenities of Life

Loss of amenities is attributable to deprivation of the plaintiff's capacity to engage in some sport or past-time which he formerly enjoyed – ***Kanyoni v Attorney General*** [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

### Deformity/Disability

Disability is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. In ***Ching'amba v Deerless Logistics Ltd*** Civil Cause No. 2888 of 2007 the court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently.

In ***Gladys Jonasi v Prime Insurance Company Ltd*** Personal Injury Cause No. 390 of 2012 the plaintiff sustained a fracture of distal tibia and multiple soft tissue injuries. He was awarded K2,000,000.00 for pain and suffering and K800,000 for loss of amenities of life on 9<sup>th</sup> May, 2016. In ***Land Mawiro v Elias Bakuli and Prime Insurance Company Limited*** Personal Injury Cause No. 14 of 2015 the claimant sustained open fracture of the left tibia. He was in plaster of Paris for 8 ½ weeks. He was unable to walk distances as he still felt pain in his leg. The court awarded him a sum of K3,500,000.00 as damages for pain and suffering, and loss of amenities of life in June, 2018.

### Analysis

The 1<sup>st</sup> claimant lost his brother 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 1<sup>st</sup> claimant a sum of K1,500,000.00 as damages for loss of expectation of life.

The deceased was aged 33 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 23 more years to live had it not been for his death. That figure of 23 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 6 years and so adopts the multiplier of 17. 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 K25,012.00x12x17x2/3 which is K3,401,632.00.



The 2<sup>nd</sup> claimant sustained closed supracondylar fracture of the right humerus, deep bruised wound on the right forearm, and a deep bruised wound at the back. Wound debridement was done in the operating theatre. He was admitted in hospital for 21 days. This shows that he went through a lot of pain and suffering. He is still suffering as he has a stiff elbow and reduced function of the elbow. This also shows that he is unable to use his hand as he used to. He was disfigured as he has a hypertensive scar on the right elbow, stiffness and reduced function of the right elbow, and scar on his back.

The 2<sup>nd</sup> claimant's injuries are more than those suffered by the claimants in ***Foster Kasokota v Davis Simenti and Prime Insurance Company Limited*** (supra) and ***Land Mawiro v Elias Bakuli and Prime Insurance Company Limited*** (supra). The 2<sup>nd</sup> claimant is, therefore, awarded a sum of K2,500,000.00 as damages for pain and suffering, K1,000,000.00 as damages for loss of amenities of life, and K1,500,000.00 as damages for disfigurement.

#### Special Damages

Special damages are supposed to be pleaded and proved. The claimants proved that they had spent K13,500.00 in order to procure either the medical or death report and Police reports. Each claimant is, therefore, awarded a sum of K13,500.00.

#### Conclusion

The 1<sup>st</sup> claimant is awarded a total sum of K4,915,132.00 as damages for loss of expectation of life and dependency. The 2<sup>nd</sup> claimant is awarded a total sum of K5,013,500.00. The claimants are also awarded costs of the action.

Pronounced in court this 11<sup>th</sup> day of October, 2018 at Blantyre.



**E. BODOLE (MRS.)**

**ASSISTANT REGISTRAR**