



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 626 OF 2018

BETWEEN

BITILISI JAILOS [suing on her own behalf and on behalf of other

beneficiaries of the estate of **MUHAMMAD YUSUF (Deceased)**] **CLAIMANT**

AND

OLIVE MKWANDA **1ST DEFENDANT**

LIBERTY GENERAL INSURANCE COMPANY LIMITED **2ND DEFENDANT**

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

Mzumara, of Counsel for the Claimant

Counsel for the Defendants, absent

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendants claiming damages for loss of dependency, loss of expectation of life, special damages for costs incurred in obtaining police and medical reports, and costs of the action. Judgment on liability was entered for the claimant on 26th November, 2018. The matter has now come for assessment of damages.

The Evidence

The claimant is the wife of the deceased, late Muhammad Yusuf. The deceased was hit by a motor vehicle which was negligently driven by the 1st defendant. He sustained severe injuries from which he later died from. His death is a major loss to his family. He was aged 30 years at the time of his death. He was doing some small business and according to the claimant, he was earning about K50,000.00 a month.

The claimant is claiming damages for loss of dependency, loss of expectation of life, special damages in the sum of K13,000.00 as costs for procuring police and death reports.

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.

