



MALAWI JUDICIARY  
**IN THE HIGH COURT OF MALAWI**  
 SITTING AT BLANTYRE PRINCIPAL REGISTRY  
**PERSONAL INJURY CAUSE NO. 931 OF 2014**

**BETWEEN**

MIRRIAM MAKHUVA,  
 an Infant, **suing through Justin Makhuva**  
**her Father and Next Friend** ..... **PLAINTIFF**

and

PETER K MVALO ..... **1<sup>ST</sup> DEFENDANT**  
 PRIME INSURANCE CO LTD ..... **2<sup>ND</sup> DEFENDANT**

**CORAM**

**HIS HON. N. USIWA USIWA** ..... **DEPUTY REGISTRAR**  
 Mr. L Ulaya ..... of Counsel for the Plaintiff/ Applicant  
 ABSENT ..... of Counsel for the Defendant/Respondent  
**Mrs D Mtegha** ..... **Official Interpreter**

**ORDER ON ASSESSMENT OF DAMAGES**

Earlier **today** this matter came for assessment of damages. The Defendants' Counsel was absent despite proof of service tendered by the Plaintiff's Counsel.

During the assessment LEKERENI MAKHUVA, mother to Mirriam paraded before me a seven year old girl, who she said has feats of unruly behaviour due to an accident. The scars on her head spoke louder than the mother's testimony. She is a victim of the accident that happened as follows.

On 21st June, 2014, along the Limbe-Thyolo Road near Chigumula H.M.S Company, a motor vehicle registration number NB 3760 hit and injured a then five-year old Mirriam.

As a result of being hit by the vehicle she sustained injuries. She was treated for various injuries which she sustained during the said accident, including several head injuries, epidural hematoma, swelling of the brain due to blood clots. She also underwent surgery, a procedure called burr hole on her head and also blood

transfusion. She suffered a lot of pain and suffering and it is also in evidence that she has been left with a permanent scar on her head.

Through her parent she brought this action against the Defendants for an order that the 2nd Defendant, as insurer of the said vehicle registration number NB 3760, is to compensate the plaintiff for damages for pain and suffering, loss of amenities, disfigurement and other special damages.

These proceedings today follow a consent order on the Defenant's liability that came before Justice M Tembo on 17 February 2016.

## **ISSUES**

The only issue to be determined today is how much should the minor be compensated with.

## **LAW AND ANALYS IS**

It is settled law that a person who has suffered damages due to the negligence of another is entitled to recover damages against that other. The aim of awarding damages is to compensate the injured party as nearly as possible as money can do. In the case of *Livingstone v Raw yards Cool Company (1880) AC 25*, it was stated by Lord Blackburn as follows:

'when an injury is to be compensated by damages in setting the money to be given for damages you should as nearly as possible get at that sum of money which will put the party who had been injured or has suffered in the same position he would have been in if he had not sustained the wrong for which he is now getting his compensation'

It is prudent therefore for the court in assessing damages payable to be guided by decided cases of comparable nature. Nevertheless the court must be mindful that no two cases are similar as each case is peculiar to itself.

### **Pain and Suffering**

It is in evidence that after the plaintiff was hit by the motor vehicle herein, she was treated for various injuries which she sustained during the said accident, including several head injuries, epidural hematoma, swelling of the brain due to blood clots. She also underwent surgery, a procedure called burr hole on her

head and also blood transfusion. She suffered a lot of pain and suffering and it is also in evidence that she has been left with a permanent scar on her head. Further, it is in evidence that following the accident, she seems to experience lapses of mental instability and she is not able to play with her friends as she used to before the accident. Her permanent incapacity was assessed at 353 she is therefore She is therefore entitled to compensation by the 2<sup>nd</sup> Defendant.

In the case of ***Malichi v Prime Insurance Company Limited, Cause Number 26 13 of 2009(unrep)***, the plaintiff suffered a cut wound on the scalp, bruises on the face, swollen head and fracture of left tibia. He also felt headaches and limped when walking. Permanent incapacity was assessed at 453. The plaintiff was awarded K4, 500,000.00 for pain and suffering and loss of amenities of life. The award was made on 29<sup>th</sup> May 2012.

In the case of ***Zambasa v Petroda (mw) limited civil cause number 631 of 2011 (unrep)*** the plaintiff suffered a cut in the head which had to be sutured with 6 stitches and removed after 3 weeks, and his permanent incapacity was assessed at 153 . He was awarded with K600.000.00 for pain and suffering alone. The award was made on 20<sup>th</sup> July 2012.

In the case of ***Kote v Packaging Industries Limited Civil Cause Number 2416 of 2010 (unrep)*** , the plaintiff suffered a deep cut wound on the head and leg which were sutured and dressed. The plaintiff fell unconscious at the time of the accident and was hospitalised for 5days. He was awarded K800.000 .00 for pain and suffering and loss of amenities of life. The award was made on 3<sup>rd</sup> May, 2012.

In the case of ***Malisewo v Charter Insurance Company, Civil cause Number 915 of 2012*** the plaintiff suffered a wound on the head and hair scrapped off, fracture of the left Tibia and Fibula of left leg, soft tissue injuries with abrasions and bruises, and hospitalised for 21 days . He was awarded K2,100,000.00 for pain and suffering and loss of amenities of life, and K600.000,00 for disfigurement. The award was made on 29<sup>th</sup> October 2012.

**In the present case**, in comparison to the above cited authorities, and taking into account the severity of her head injuries and the surgery performed on her head, and also considering devaluation of Kwacha Currency, the plaintiff prays for the sum of K1,500,000.00 for pain and suffering , K900.000.00 for loss of amenities of life, and K1,000 ,000.00 for pain and suffering, K900,000.00 for loss of amenities of life, and K1,000,000.00 for disfigurement .

The plaintiff also prays for special damages totaling the sum of K60,000.00 , comprising of costs of obtaining medical report, police report and also special care that was required at the time she was critically ill.

In order to come up with adequate compensation for the seven year girl I saw earlier today to have lost permanently, her normal life; and after looking at the

cases cited above I think not even the K5,000,000 .00 is enough to compensate for this permanently disturbed life. However we have to compensate the injured girl as nearly as possible as money can do. So I order the Defendant to pay the Plaintiff the sum of K5,000,000.00 within 14 days of this Order.

The Defendants shall also be condemned with costs.

MADE in Chambers this **16<sup>th</sup>** day of **June, 2016**.

*Nyakwa*                      a Usiwa  
**DEPUTY REGISTRAR**