

REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NUMBER 898 OF 2010

**BETWEEN:**

**STEVE NANSONGOLE.....PLAINTIFF**

**AND**

**UNITRANS MALAWI LTD.....1<sup>ST</sup> DEFENDANT**

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

**CORAM: MANDALA: ASSISTANT REGISTRAR**

Kalanda: Counsel for Plaintiff

Juris Chambers: Legal Practitioners for the 1<sup>st</sup> Defendant

Destone and Company: Legal Practitioners for the 2<sup>nd</sup> Defendant

Chitsulo: Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a consent order on liability issued on 22<sup>nd</sup> November 2016 by the Honorable Assistant Registrar. In this order, the 1<sup>st</sup> defendant was ordered to pay damages for pain and suffering and loss of amenities of life to be assessed by the Registrar, the 1<sup>st</sup> Defendant was ordered to pay special damages to be assessed by the Registrar and that the costs of and occasioned by the judgment be for the Plaintiff.

The Plaintiff commenced the present action on 4<sup>th</sup> May 2010 claiming damages for pain and suffering, loss of amenities of life; damages for loss of earning capacity, the sum of K48,000.00 being value of the pigs lost at the accident scene plus profit, the sum of K5,450.00 being medical bill paid at St Montfort Hospital where the Plaintiff was first taken after the accident. The basis of the Plaintiff's claim was road accident that occurred on 22<sup>nd</sup> September 2009 around Kasinthula on the NchaloChikwawa road.

**EVIDENCE**

The Plaintiff adopted his witness statement as evidence in chief; it is set out below:

6 I, STEVEN NANSONGOLE, an adult of Private Bag 67, Blantyre STATE as follows:



6.1 I am a business man and my business involves me buying pigs from the Lower Shire and other places and reselling the same to butcheries in Blantyre and Limbe.

6.2 The particulars of claim are contained in the amended statement of claim on record.

6.3 As a result of that, I sustained the following injuries:

- i. Fractured right arm;
- ii. Open wound on the left leg i.e. the skin on the leg peeled off exposing the bone and had to be stitched back at the hospital.
- iii. We were taken to Montfort Hospital where I was given treatment at the cost of K5,450 and where a plaster of Paris was applied to the fractured arm.
- iv. I was transferred to Queen Elizabeth Central Hospital the following day where I spent a day before being discharged. At Queen Elizabeth Central Hospital, the plaster of Paris applied at Montfort Hospital was removed and a new one applied on 23<sup>rd</sup> September 2009.
- v. On 4<sup>th</sup> October 2009, a new plaster of Paris was applied to the arm.
- vi. As a result of the accident, I have difficulties rotating my head.
- vii. I also feel pain on my leg.
- viii. I have problems using my right hand.
- ix. The majority of the injuries above are confirmed by the medical report exhibited hereto and marked 'PW1'.

6.4 Following the accident, I lost all the 7 pigs that I had bought at the total price of K35,000.

6.5 If I had sold the pigs, I would have made a net profit of K13,000. This means that I lost the sum of K48,000.00 being the money spent on buying the pigs and the profit I would have made if I had sold them.

6.6 I used to make between 2 to 3 trips per week to buy the pigs.

6.7 Because of the accident, I cannot manage to do the business again because it involves extensive use of both hands and am a right hander.

The Plaintiff tendered a medical report that was marked Exhibit P2. It states in part, *"Nature of injuries: fracture right humerus, deep cuts on the left leg. Surgical operation or treatment accorded to the patient: suturing of the wounds, Plaster of Paris for the right arm, now complain of not able to extend the arm(elbow) fully. Permanent incapacity at 16%."*



The Plaintiff explained, in his oral testimony, that he fractured his arm and produced an x-ray to show the court how the arm had been broken. The Plaintiff also showed the court where he was injured on his leg and stated that he had to have his leg sutured. The Plaintiff's evidence was not opposed.

#### SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF

Counsel for the Plaintiff filed written submissions before the court. These submissions proposed the quantum that court should consider.

#### ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for the plaintiff's both pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the plaintiff would have made had he not been injured, and the medical and other expenses to which he is put as a result of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it. See **Cassel and Co v Broom** [1972] AC 1027. See also **Tembo v City of Blantyre and The National Insurance Co Ltd** – Civil Cause No. 1355 of 1994 (unreported).

In the case of **TiongeZuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu**, Nyirenda AR, cited the case of **HQ Chidule v MediMSCA** 12 of 1993 where it was stated that; *"in assessing damages for pain and suffering, the court must consider the pain which the particular plaintiff has suffered because the circumstances of the particular plaintiff are bound to have a decisive effect in the assessment of damages...Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award."*

The Plaintiff is claiming damages for pain and suffering, loss of amenities of life; damages for loss of earning capacity, the sum of K48,000.00 being value of the pigs lost at the accident scene plus profit, the sum of K5,450.00 being medical bill paid at St Montfort Hospital where the Plaintiff was first taken after the accident.

This court will not make an award for the sums of K48,000.00 being value of the lost pigs and profit, K5,450.00 being cost of medical expenses and loss of earning capacity as no evidence was led to prove the same. These sums are special damages and must be specifically pleaded and proved as required by law – **Govati v Manica Freight Services (Mal) Limited** [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred.

Counsel for the Plaintiff submitted two comparable awards for the court to consider. These are:

- ***Praise Chitete (Minor, suing through CLARA NKHATA, next friend) v Yotam M'dala and Prime Insurance Company Limited*** High Court, Zomba District Registry, Civil Cause Number 282 of 2014 where the Respondent was hit by a motor vehicle and she sustained a fractured radius, fractured ulna and multiple bruises on the left hand. The Plaintiff's incapacity was pegged at 25%, Plaster of Paris was applied and developed arthritis. The Assistant Registrar awarded her the sum of MK4,800,000 on 13 November 2014.
- ***Emmanuel Byton v Prime Insurance Company Limited*** High Court, Zomba District Registry, Personal Injury Cause Number 95 of 2015. The Plaintiff sustained fractures on the forearm and left knee, deformed arm, deep cuts and bruises on the forehead, swollen knee and abducted left leg. Plaintiff has difficulties walking, could not enjoy conjugal rights for 3 months after the accident. The Assistant Registrar awarded a global sum of MK6,203,000.00 as compensation on 16<sup>th</sup> October 2015.

Counsel for the Plaintiff proposed a quantum of MK8,000,000.00 as adequate compensation for the Plaintiff.

#### COMPENSATION

The court notes that Counsel for the Plaintiff selected cases where the injuries sustained were similar to those sustained by the Plaintiff in the present matter. For this, I am indebted to Counsel for citations that are on the point while acknowledging that no two cases can be exactly the same.

The Plaintiff herein sustained a fractured right humerus, deep cuts on the left leg. The wounds had to be sutured, Plaster of Paris was applied on the right arm, and he is now unable to extend the arm (elbow) fully. Permanent incapacity was pegged at 16%.

The Plaintiff in the ***Emmanuel Byton Case*** sustained injuries very similar to the Plaintiffs - sustained fractures on the forearm and left knee, deformed arm, deep cuts and bruises on the forehead, swollen knee and abducted left leg. The injuries sustained by Byton are more severe than those sustained by the Plaintiff in the present matter. The Plaintiff testified in person in my court and showed me the extents of his injuries. The Plaintiff seems to have made a full recovery save for minimal scarring. The Plaintiff must have been in a lot of pain at the time the injury occurred having to undergo suturing and constant hospital visits because of the Plaster of Paris. In the Byton Case, the Plaintiff therein was awarded MK3,000,000.00 as damages for pain and suffering. The injuries sustained by and procedures endured by Byton were more severe than the Plaintiff herein. For that reason, I award the Plaintiff MK2,000,000.00 as damages for pain and suffering.

The medical report tendered by the Plaintiff does not say much in terms of the impact of the injuries on the Plaintiff's life at the moment. Save for pegging the Plaintiff's permanent incapacity at 16%, the medical report also states that the Plaintiff is not required for further examination. In his viva voce evidence, the Plaintiff himself also did not give the court much detail



on the effect of the injuries on his present-day life. Further, the court had an appreciation of the scarring and use of limbs by the Plaintiff and it finds that the Plaintiff has made a full recovery from the injuries sustained.

As stated the Plaintiff claims a total sum of MK8,000,000.00 for the injuries sustained by the Plaintiff. However, I believe this may be excessive.

However, in **Steve Kasambwe v SRK Consulting (BT) Limited** Personal Injury Cause Number 322 of 2014 (unreported), the court stated:

*'At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.'*

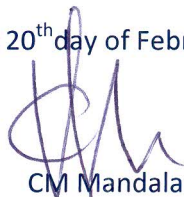
In this case, the previous awards have provided great guidance to the court.

The Plaintiff is therefore awarded M2,000,000.00 for pain and suffering, MK1,000,000 for loss of amenities of life, and costs of the action (to be taxed if not agreed).

Compensation totals a global sum of MK3,000,000.00.

Each party is at liberty to appeal to the Supreme Court within the prescribed time frame.

Ordered in Chambers on the 20<sup>th</sup> day of February 2017 at Chichiri, Blantyre



CM Mandala

**ASSISTANT REGISTRAR**