



MALAWI JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**

PERSONAL INJURY CAUSE NUMBER 996 OF 2013



BETWEEN:

MASTER KALIATI **PLAINTIFF**

and

PRIME INSURANCE COMPANY LIMITED..... **DEFENDANT**

CORAM: N USIWA USIWA, DEPUTY REGISTRAR

Mr B Matumbi of Counsel for the Plaintiff

Mr T Lemucha Counsel for the Defendant

Mrs D Mtegha Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

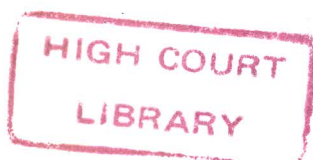
This is an Order on Assessment of Damages.

On the 14th of April 2013 at the intersection of Chinakanaka/Nsikawanjala along Nansomba/Musisi earth road, the plaintiff was a pillion passenger on a pedal cycle when he was negligently hit by the said motor vehicle.

The defendant was the insurer of motor vehicle legislation number PE 1043 Nissan Pickup. The said vehicle was being driven by the defendant's insured.

ISSUES

The only issue at hand is how much compensation is payable to the Plaintiff.



LAW AND ASSESSMENT

The purpose of an award of damages is to as much as money can do it, place the plaintiff in a position as if he had not suffered the damage. In ***Southern Bottlers Limited vs Union Assurance Co PLC (Civil Cause No 85 of 1995) MLR 1004*** Tembo; J A . stated as follows:

“a plaintiff or respondent who is suffering from wrong committed by a defendant or appellant is entitled, so far as money can do it, to be put in the same position as if he has not suffered that wrong. This is what is referred to as *restitution in intergrum*.”

In ***Makala vs. Attorney General (1998) MLR 187***, Ndovi, J stated that

“the principle of restitution in integrum, in all actions of tort, is said to be adequate and fairly easy guide to the estimation of damage: and that aim for calculating damages is to make good to the plaintiff so far as money can do it, the loss the plaintiff has suffered.”

It has however, been recognized that in matters that do not directly involve pecuniary loss such as personal injury cases, such a test is not an easy one to apply. This however, it is of no use for a court to award compensation to the affected party. The court will seek guidance from compellable cases. As Kishindo, Assistant Registrar observed in ***Catherine Bunya Misanjo vs Hon BSB Kumtsaila (Civil Cause No. 2015 of 2006)***. He stated as follows:

“Perfect compensation is impossible in personal injuries claims. Courts seek guidance from decided cases of a compellable (sic) nature to arrive at what would be reasonable in the circumstances.”

The Court will however, consider the time the awards in the comparable cases were made. As Kishindo, Assistant Registrar stated in ***Catherine Bunya Misanjo vs. Hon. BSB Kumtsaila(supra)***:

“I have considered the awards in ***Chipiro Bauti vs Matewere and Prime Insurance Company Limited*** and I considered the fact that considerable time has lapsed since those awards were made.”

In **Hon. Kennedy E. Kuntenga and Robbie Kuntenga vs Attorney General(supra)**, Tembo M. A Assistant Registrar, (as he then was) stated:

“Upon consideration of above awards the court bears in mind the fact that our currency has lost some value since those awards were made”

When assessing damages, the Court takes into the fact that currency may fall. The Courts will therefore, normally add 5% to the assessed damages: **Mbila and Another vs. Attorney General, and Banda and Chibuku Products Limited v Chunga 12 MLR 283.**

When awarding damages for pain and suffering the Court considers the seriousness of the injuries suffered. They also consider the pain the plaintiff endured on account of the breach of duty by the tort feisor.

In **Mutsinze vs. Attorney General(1997)2 MLR 19** , Mwaungulu J stated at 22:

“For pain and suffering, I agree with the suggestion that the injuries here were not very grave. The plaintiff however, went through a great deal of pain. The pain was from the injuries themselves and the surgery. The chief surgeon speaks of future operations. There is prospect of further pain.”

In **Ndawanje(through mother and next friend Roren Makaniankhondo) vs. NICO General Insurance Co Limited (2009) Civ Cause No 346**, the plaintiff as a result of the Defendant's negligence, suffered a fractured right ankle, lacerations and soft tissue injuries. The court awarded MK800.000.00. The award was made in March 2010.

In **Eric Gunsaru vs Bright Way Enterprises(2006) Civ Cause No 1639**, the plaintiff was awarded MK250,000.00, pain and suffering , as result of injuries to his ribs and bruising to his knees. The award was made in March 2009.

In ***Mpeketula and Jordan vs Kiwi Brands Limited and Prime Insurance Company Limited(2002) Civ Cause No 2420*** the Court awarded MK80,000.00 for pain and suffering. The Plaintiff had suffered a dislocated right knee that swells when he walks long distances and bruising to his shoulder. The award was made in December 2002.

The plaintiff in the present matter severe soft tissue injury, bruises, swollen left leg and reduced left knee joint movement

As a result of these injuries the plaintiff has reduced mobility in his left knee, according to the assessment of the Doctors as stated in the medical report.

In view of these facts and owing to the time lapse which in turn introduces inflation and the major devaluation of the Malawi Kwacha into the picture, I award the sum of **Mk1,500,000.00** to the Plaintiff as adequate compensation. The compensation shall be paid within 14 days of this award.

The Defendants shall also be condemned with costs.

MADE in Chambers this **7th** day of **June, 2016**.



Nyakwawa Usiwa Usiwa
DEPUTY REGISTRAR