



MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
 PRINCIPAL REGISTRY



PERSONAL INJURY CAUSE NO. 11 OF 2015

BETWEEN:

RUBI SULEMAN **PLAINTIFF**

and

RAHIM NGWALI **1ST DEFENDANT**

and

PRIME INSURANCE COMPANY LIMITED **2ND DEFENDANT**

CORAM: N USIWA USIWA, DEPUTY REGISTRAR

Mr C Mwala of Counsel for the Plaintiff

Mr B Mhango Counsel for the Defendant

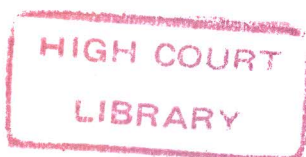
Mr D Mtegha Official Interpreter

ORDER ON ASSESSMENT OF DAMAGESP

Pursuant to a default judgment upon failure to serve a defence the matter herein comes for assessment of damages.

THE LAW AND ASSESSMENT

In personal injury cases, damages are aimed at putting the plaintiff in the position he would have had the tort not been committed: **Namwiyo v Semu & Others (1993) 16(1) MLR 369.**



However damages in personal injury cases cannot give a perfect compensation in money terms for physical and bodily injury. What is awarded as damages is only what can be seen as reasonable compensation for the injuries suffered by the Plaintiff. So in assessing the damages the court must consider the pain and suffering which the particular plaintiff suffered as this has a bearing on the assessment of damages: **Chipeta v Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998.**

In arriving at what award to make the court, for the sake of consistency and guidance, take into account previously decided cases while paying attention to the fall or rise of the value of the kwacha over the years: **Paulo –vs- Mwakabanga (1991) 14MLR 409**

In the case of **Henry Manyowa v Timothy Phiri and Prime Insurance Company Limited, Personal Injury Cause No. 139 of 2012** where the plaintiff suffered an open fracture of his tibia on the left leg, the court awarded him K2,800,000.00.

In the case of **Charles Kamanga v Prime Insurance Company Limited, Civil Cause No. 3011 of 2008** where the plaintiff suffered deep cuts, fracture to shoulder and painful spine and neck, the court awarded him 2,500,000.00.

In the case of **John Muheka v Francis Katsala and Real Insurance Company Limited, Civil Cause No. 1649 of 2010** where the plaintiff suffered fracture of the right tibia and fibula, multiple soft tissue and bruises the court awarded him K1,524,500.00.

In the case of ***Wilson Kamwendo v Reunion Insurance Company Limited, Civil cause No. 913 of 2010*** where the plaintiff suffered a fracture of the right femur and knee he was awarded K4,000,000.00

Again in the case of ***Batumeyo Paulo v United General Insurance Company Limited, Civil Cause No. 2265 of 2010***. K1,600,000.00 was awarded to the plaintiff who suffered open fracture of tibia and fibula. But K2,500,000.00 was awarded to the plaintiff who suffered a fracture of the femur and soft tissue injuries in the case of ***Wongani Kayira v James Nomanda and Prime Insurance Company Limited, Civil Cause No. 1909 of 2010***.

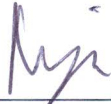
The Defence first cited two cases, among others. In ***Brian Ndawanje vs. Nico General Insurance Company Limited Civil cause Number 346 of 2009***, where the plaintiff who sustained fractured right ankle, pectoral lacerations and abrasions, soft tissue injuries and chest wounds was awarded K800,000.00 for pain and suffering and loss of amenities of life. This award was made in March 2010.

In ***Catherine Makwanitsa vs Jumbe Patel Civil Cause Number 3332 of 2005*** the court in July 2012 awarded the plaintiff K838,400.00 as damages for pain and suffering and loss of amenities of life. In this case the plaintiff sustained a fracture of the knee. The plaintiff incapacity was 70% and the court found that the plaintiff had underwent through a considerable pain suffering.

The defence then submitted that from the evidence the sustained mid shaft left femur was relatively minor compared to the cases of ***Brian Ndawanje vs. Nico General Insurance Company Limited*** and ***Catherine Makwanitsa vs Jumbe Patel Civil Cause Number 3332 of 2005***.

IN MY CONSIDERED VIEW, after examining the cited cases I think that an award of K2,000, 000.00 would be adequate compensation to the teenager victim of the Defendant's negligence. I therefore order the Defendant, whom I also condemn with costs, to pay the Plaintiff the sum of K 2,000,000.00 within fourteen days from the day the Defendants are served with this Order.

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



Nyakwawa Usiwa Usiwa
DEPUTY REGISTRAR