



REPUBLIC OF MALAWI  
**IN THE HIGH COURT OF MALAWI**  
PRINCIPAL REGISTRY  
Personal Injury Cause Number 903 of 2014

**BETWEEN:**

**GRIVIN CHARLES LUNDU.....PLAINTIFF**

**AND**

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

CORAM:      **Ms. CM MANDALA: ASSISTANT REGISTRAR**  
Mr C Kalua:      Counsel for Plaintiff  
Mr M Ngwata:      Counsel for Defendant  
Mr PW Chitsulo:      Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a Judgment delivered on the 29<sup>th</sup> day of November 2016 by the Honorable Justice R Mbvundula. Judgment was entered against the Defendant and the Plaintiff was awarded damages and costs as prayed for.

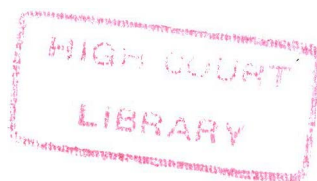
The Plaintiff commenced the present action on 10<sup>th</sup> September 2014 claiming damages for pain, suffering and loss of amenities of life and disfigurement, special damages and costs of the action. The basis of the Plaintiff's claim was an accident that occurred on 9<sup>th</sup> June 2014 when the defendant's insured hit the Plaintiff as he was cycling along the Blantyre/Chikwawa road and knocked him to the ground. The Plaintiff sustained a dislocation of the right foot, painful swollen right leg, a deep cut on the right foot, dislocation of the right shoulder, fracture of the right clavicle, deep cut on the forehead and multiple bruises on both knees and hands.

**EVIDENCE**

The Plaintiff adopted his witness statement as evidence in Chief. It states:

**"I GRIVIN CHARLES LUNDU, do hereby state as follows:**

1. *I am the plaintiff in this action.*



2. *I remember that I was involved in a road accident on 9 June 2014 at Stella Maris Secondary School. It involved motor vehicle registration number BR 5429 Toyota Hiace Minibus and myself.*

3. *On the material day, I was coming from Green Corner and I was going to Zingwangwa. I was cycling on the left hand side of the Blantyre/Chikwawa road.*

4. *When I reached a place near Stella Maris Secondary School I was turning right going to Zingwangwa. When I had almost finished turning I was hit by motor vehicle registration number BR 5429 Toyota Hiace Minibus which was also coming from the same direction as me. After hitting me the motor vehicle pulled me for a distance. The accident happened because the minibus driver was overspeeding and swerved to the right lane. Had it been that he was in his left lane the accident could have not happened.*

5. *As a result of the accident I sustained dislocation of the right foot, swollen right leg, deep cut wounds on the right foot, dislocation of the right shoulder, severe cut wound on the left eye, a deep cut wound on the forehead, severe injuries involving the head, bruises on both knees and bruises on both hands.*

6. *I lost consciousness on the accident spot. I just realized that I was at Queen Elizabeth Central Hospital after regaining consciousness. I was admitted for two weeks. As part of treatment they took me to theater and I was put on oxygen.*

7. *I have not completely healed as I can no longer see properly. My leg will become swollen when I am walking and the wounds on the leg have not healed. I also experience loss of memory and I sometimes behave like an abnormal person. The bone on the shoulder which was dislocated has not come into its place.*

8. *I also want to mention that on the material day I was cycling and my bicycle was also damaged beyond repair.*

9. *I want to be compensated for the injuries I sustained. I therefore instructed Messrs Golden & Law to claim compensation on my behalf.*

10. *I make this statement knowing it to be true to the best of my knowledge and belief.*

The Plaintiff tendered a medical report from Queen Elizabeth Central Hospital and it was marked Exhibit P1. It stated: "Date admitted to hospital: 9/06/2014, date discharged from hospital: 23/06/2014; Treated as an outpatient from: 23.6.2014 to 30.8.14; Nature of injuries: 'he sustained a dislocation of the right foot, painful swollen right leg, a deep cut on the right foot, dislocation of the right shoulder, fracture right clavicle, a deep cut on the forehead and multiple bruises on both knees and hands.' Clinical analyses made: 'head to toe examination, x-ray of the right shoulder, right foot.' Medical treatment offered: 'analgesics and antibiotics'; Surgical operations performed were 'POP application, suturing of wound and oxygen therapy.' The results of the treatment were: 'difficulties in walking, scar formation, painful right shoulder and he cannot lift up heavy objects.' Possibility of developing arthritis: 'Yes, post traumatic arthritis.' Shortening of limb: 'No'. 30% incapacity. The injuries sustained are serious."

In his viva voce evidence, the Plaintiff confirmed that he was injured and he showed the court his injuries. The Plaintiff told the court that he sustained an injury on his eye, the court noted a visible

scar where a cut wound was on the left eye. The Plaintiff also sustained an injury on his head and shoulder. Further, the Plaintiff's right knee, foot and leg were injured. The court noted some visible scarring and a swollen ankle. The Plaintiff also showed the court his left knee where the court noted scarring on the knee. There was also visible skin discoloration between the knuckles on both hands where he had sustained injuries. The Plaintiff showed the court the left part of his forehead, however the court could not see any scars on the forehead. The Plaintiff still feels pain on his right shoulder and right leg.

In cross examination, the Plaintiff confirmed the contents of the medical report and stated that he sustained an injury on his head. Lundu confirmed that he cannot read English. Lundu was referred to paragraph 7 of the medical report where he confirmed that his leg swells when he is walking. However, he had never gone to the hospital in this regard. He did not get a medical report nor did he visit the hospital for his memory loss or abnormal behavior since the accident. He was able to identify the medical report from the hospital and he is able to see.

#### SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF

Counsel for the Plaintiff filed written submissions for the Court's consideration.

- ***Owen Kayira and 2 others v Unusu Shaikh*** Personal Injury Cause Number 1160 of 2013 where the Plaintiff was awarded K2, 500,000.00 on 1<sup>st</sup> July 2014 being damages for a head injury, multiple soft tissue injuries over the head and lost consciousness on the spot.
- ***Nellie Manda v Prime Insurance Company Limited*** Civil Cause Number 619 of 2009 where the plaintiff sustained a fracture of the left upper arm, deep wound on the right thigh, bruises on the lower leg and deep cut wounds on the left thumb, left index finger and left middle finger and was awarded MK6,500,000.00 for pain and suffering and loss of amenities of life on 25<sup>th</sup> April 2012.
- ***Thokozani Josamu and Luka Mandevu v Prime Insurance Company Limited*** Civil Cause No 1534 of 2010 where the Plaintiff was awarded MK2,000,000.00 on 4<sup>th</sup> April 2014 after sustaining a big cut wound on the inside part of the knee, bruises on both hands and other parts of the body, cut wounds on the head, a swollen hand and lost consciousness on the spot.
- ***Robert Piason & 3 others v Prime Insurance Company Limited*** Personal Injury Cause No 413 of 2013 where the 1<sup>st</sup> Plaintiff sustained a cut wound on the head, chest pains and painful shoulder and she was awarded MK3,000,000.00. The 3<sup>rd</sup> Plaintiff sustained a head injury, with loss of consciousness, deep cut wound on the shoulder, multiple bruises on the knee and a cut on the pelvis and was awarded MK3,000,000.00. These awards were made on 6<sup>th</sup> September 2014.

Counsel for the Plaintiff submitted that considering the multiplicity of injuries sustained by the Plaintiff coupled with the loss in value of the kwacha due to devaluation, compensation in the sum

of K6,000,000.00. As well as K3,000.00 being the cost of the police report, K10,500.00 being the cost of the medical report and costs of the action.

### THE LAW ON ASSESSMENT OF DAMAGES

The High Court in **Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd** [1992] 15 MLR 370 (HC) set the basis for assessment of damages:

*'Assessment of damages.....presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.'*

The rule is that prior to assessment, the injured party has provided proof of damage sustained – **Yanu-Yanu Co Ltd v Mbewe** (SCA) 11 MLR 405. Even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation – **Mkumuka v Mphande** (HC) 7 MLR 425.

The cardinal principle in awarding damages is '*restitutio in integrum*' which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained – **Halsbury's Laws of England** 3<sup>rd</sup> Ed. Vol. II p.233 para 400.

This principle was further enunciated in **Livingstone v Raywards Coal Co** (1880) 5 App Cas 25 at 39, where Lord Blackburn said:

*'...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'*

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - **Stros Bucks Aktie Bolag v Hutchinson** (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - **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. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – **Wood Industries Corporation Ltd v Malawi Railways Ltd** [1991] 14 MLR 516.

Although perfect compensation is impossible, what the plaintiff should get is fair and adequate compensation - **British Commission v Gourley** (1956) AC 185. Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in

**West v Shepherd** (1964) AC 326 at 346 where he states: *'money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.'*

The court bears in mind the sentiments laid out in **Steve Kasambwe v SRK Consulting (BT) Limited** Personal Injury Cause Number 322 of 2014 (unreported):

*'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.'*

### COMPENSATION

The Plaintiff herein sustained a dislocation of the right foot, painful swollen right leg, deep cut on the right foot, dislocation of the right shoulder, fracture of the right clavicle, deep cut on the forehead and multiple bruises on both knees and hands. The Plaintiff lost consciousness upon impact, was hospitalised for two weeks following the accident and was treated as an outpatient for a further two months.

#### *Pain and Suffering*

The word 'pain' connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident while 'suffering' includes fright, fear of future disability, humiliation, embarrassment and sickness. See: **Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents** (Butterworths, 1985) 8 and **City of Blantyre v Sagawa** [1993] 16(1) MLR 67 (SCA).

The Plaintiff sustained numerous injuries that range from fractures, dislocated limbs, deep cuts and bruises. In addition, Lundu was admitted to Queen Elizabeth Central Hospital for a period of up to two weeks and had to be treated as an outpatient for up to two months. Upon arrival at the hospital, the Plaintiff was taken to theater and placed on oxygen treatment. The Plaintiff went through numerous procedures in order to stabilize him. These procedures were topped with the shock that the Plaintiff underwent when he woke up in hospital after the impact.

The **Thokozani Josamu Case** and the **Robert Piason Case** cited by Counsel are the closest to the Plaintiff's claim in terms of injuries and time as both were made in 2014. Both cases give good direction to the court, in the **Josamu Case**, the Plaintiff was awarded the sum of K2, 000,000.00 for a cut wound, bruises on both hands and other parts of the body, cut wounds on the head, swollen hand and loss of consciousness at the spot of the accident. The **Piason Case** awarded K3,000,000.00 a piece to the 1<sup>st</sup> Plaintiff that sustained a cut wound on the head, chest pains and painful shoulder



and to the 3<sup>rd</sup> Plaintiff who sustained a head injury, loss of consciousness, deep cut wound on the shoulder, multiple bruises on the knee and a cut on the pelvis.

With these cases in mind, the court bears in mind the length of time that has passed since the awards were made, April 2014 and September 2014 respectively, and the fact that these were global sums under all heads awarded to the Plaintiffs. For these reasons, this court awards the Plaintiff the sum of MK1,800,000.00 as compensation for pain and suffering.

#### *Loss of Amenities*

The expression 'loss of amenities of life' simply means loss of faculties of pleasures of life resulting from one's injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: ***Poh Choo v Camden and Islington Area Health Authority*** [1979] 2 All ER 910 and ***City of Blantyre v Sagawa*** [1993] 16(1) MLR 67 (SCA) at 72.

Since the accident, the Plaintiff can no longer see properly. His leg swells when he is walking and the wounds have not properly healed. The Plaintiff also states that he experiences loss of memory and he sometimes behaves like an abnormal person. As noted by Counsel Ngwata for the defence during cross examination, the Plaintiff did not adduce any evidence of the alleged behaviour. It would be difficult to gauge the Plaintiff's mental issues, if any, without any supporting documents to confirm any mental effect that the accident might have had on the Plaintiff. The Plaintiff further alleges that the dislocated shoulder has not come back into its place. The court had occasion to inspect the shoulder and saw no scarring and no displacement of the bone. Often times dislocation of the bone can be seen by the naked eye without the need for an x-ray or any medical equipment.

For these reasons, this court will award K750,000.00 being damages for loss of amenities.

#### *Disfigurement*

In the matter of ***James Chaika v NICO General Insurance Co Ltd*** - the Honourable Justice Potani stated that '*Disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with. In this case, the plaintiff will most likely walk with a limp for the rest of his life which is not a pleasant thing.*' In this case, the Plaintiff was awarded the sum of MK300,000.00 for disfigurement.

The court had occasion to inspect the Plaintiff's scars during the time of hearing and noted visible scarring on the left eye, scarring on the Plaintiff's right leg and his right ankle was swollen. Further there was visible scarring on the Plaintiff's left knee and discolouration between the plaintiff's knuckles on both hands.

Although Counsel did not make any submission on damages for disfigurement, this court will have recourse to this court's assessment in ***Ronaldo Likoloma v Iqbal Mahomed*** Civil Cause Number 870 of 2013 where the Plaintiff on 4<sup>th</sup> May 2017 was awarded the sum of MK350,000.00 being damages for disfigurement for dog bites that left very visible scarring. In the case of ***Braidon Mayaka v Nico***

**General Insurance Company Limited** Personal Injury Cause Number 882 of 2012 on 27<sup>th</sup> April 2017 this court awarded the sum of MK300,000 as damages for disfigurement to a Plaintiff who sustained scarring on the face and darkening of the chest. In the case of **Matthews Marko Satewani v Prime Insurance Company Limited** Personal Injury Cause Number 628 of 2013 this court awarded the sum of MK300,000 to a Plaintiff that had a scar on the right leg as well as an indenture where the scar is.

With these awards in mind, this court awards the sum of MK350,000.00 as damages for disfigurement.

#### *Special Damages*

Cost of police and medical reports 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. This court will not make an award for the cost of police and medical reports as no evidence was led to prove the same.

#### DISPOSAL

The Plaintiff is therefore awarded MK1,800,000.00 being damages for pain and suffering, MK750,000.00 for loss of amenities of life and MK350,000.00 being damages for disfigurement.

A total sum of MK2,900,000.00 is awarded in damages. Costs to be taxed.

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 22<sup>nd</sup> day of May 2017 at Chichiri, Blantyre



CM Mandala

**ASSISTANT REGISTRAR**