



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 530 OF 2015

BETWEEN:

FRIDAY MTELERA.....PLAINTIFF

AND

NENANI MISOLO.....1<sup>ST</sup> DEFENDANT

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

CORAM:       **MANDALA: ASSISTANT REGISTRAR**  
Mwabungulu: Counsel for Plaintiff  
M&M Global: Legal Practitioners for the Defendant  
Chitsulo:       Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to an order on liability made on 25<sup>th</sup> October 2016 by the Honorable Justice HSB Potani. In this order, the defendants were found liable and ordered to compensate the Plaintiff with damages for pain, suffering and loss of amenities of life; damages for deformity and disfigurement, MK3000.00 as cost of police report and MK2500.00 as cost of medical report.

The Plaintiff commenced the present action on 23<sup>rd</sup> June 2015 claiming damages for pain, suffering and loss of amenities of life; damages for deformity and disfigurement, MK3000.00 as cost of police report and MK2500.00 as cost of medical report. The basis of the Plaintiff's claim was road accident that occurred on 20<sup>th</sup> January 2015 along the Blantyre-Zalewa Road when the 1<sup>st</sup> Defendant driving motor vehicle registration number NE 2591 Scania Lorry hit a motor vehicle registration number MC 3927 being driven by the Plaintiff. Liability was already determined by Justice HSB Potani, this court will proceed to determine the quantum of damages to be awarded to the Plaintiff.

**EVIDENCE**

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

5       *I am the above-named Friday Mtelera.*



- 6     *I am a driver by occupation.*
- 7     *I recall it was on 20<sup>th</sup> January 2015 I was coming from Balaka going towards Blantyre. I was driving motor vehicle Toyota Hiace Minibus registration number MC 3927 on Zalewa-Blantyre Road. Upon arrival at or near Mlambe Mission Hospital a Scania Lorry coming from the opposite direction, was overtaking two vehicles that were on its lane. The aforesaid Scania Lorry, whilst in the process of overtaking the other two motor vehicles, collided with the vehicle I was driving. I hereby produce a police report marked 'FM1' which I processed to substantiate the foregoing.*
- 8     *As a result of the accident I sustained fracture of the knee joint of the right leg, fracture of the right lower leg, fracture of the ankle of the right leg, a cut on the left leg and a cut and bruises on the right elbow.*
- 9     *I was taken to Mlambe Mission Hospital and then I was transferred to Queen Elizabeth Central Hospital where I was fully treated. I was then taken to theatre where I was informed that my right leg had fractures on three parts. My leg was subsequently inserted with seven metal rods on the three fractures. The metal rods are still in my right leg to date. I was admitted from 20<sup>th</sup> January, 2015 to 16<sup>th</sup> February, 2015. I exhibit a medical report and mark it 'FM2' to substantiate the foregoing.*
- 10    *As a result of the accident I can no longer drive a motor vehicle and I cannot walk without clutches and pain killers.*
- 11    *The information stated herein is true to the best of my experience, knowledge, information and belief.*

The Plaintiff tendered a Police Report that was marked Exhibit P1. However, in a determination of assessment of damages a police report is immaterial as it does not shed light on injuries suffered by the Plaintiff. The Police Report would be more useful in a determination for liability. The determination of liability was already made in this matter and it gave rise to the assessment of damages. I therefore attach no weight to the Police Report.

The Plaintiff tendered a medical report that was marked Exhibit P2. It states in part, "*Nature of injuries: fracture femur, fracture right patella, fracture tibia/fibula, cut on the left leg, cut on the right elbow and bruises. Surgical operation or treatment accorded to the patient: open reduction and internal fixation, plaster of Paris, wound dressing, suturing. Permanent incapacity at 30%. The patient will perform manual work and previous job with difficulties. Patient will be depending on analgesics.*"



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 laid out the comparable awards which I will discuss subsequently. I should commend Counsel for the Plaintiff for the copies of the judgments that he furnished to the court.

#### 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 **Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu**, Nyirenda AR, cited the case of **HQ Chidule v Medi** MSCA 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, suffering and loss of amenities of life; damages for deformity and disfigurement, MK3000.00 as cost of police report and MK2500.00 as cost of medical report.

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

Counsel for the Plaintiff submitted numerous comparable awards for the court to use. The court will only highlight the citations whose copies were provided to the court. These are:

- ***Felista Kachaso v Peter Kondowe & Others*** High Court, Principal Registry, Civil Cause Number 320 of 2009 where the Respondent was hit by a motor vehicle, she fell down on the back of her head and rested on her arm. The Plaintiff sustained a big cut wound on the back of her head, a closed fracture of the right humerus, an open fracture of the right leg near the ankle and a closed fracture of the pelvis. The respondent was cast in a plaster of Paris, the wound was sutured and she was admitted to the hospital for 18 days. Every day for 10 days she was treated with a drip and two injections. After the plaster of Paris was removed, she went for a check up on 21 November 2008 and the fractured leg was recast in a plaster of Paris which was removed on 23 December 2008. Justice Kamwambe awarded the Plaintiff damages of MK5,600,000.00 on 16<sup>th</sup> October 2009.
- ***Zuze Bonjesi v Prime Insurance Company Limited*** High Court, Principal Registry, Civil Cause Number 488 of 2011. The Plaintiff sustained a severe open fracture of the left tibia, massive wound exposing the bone and tendons and deep wound on the right leg. He was in hospital for 3 months and permanent disability was pegged at 45%. The Assistant Registrar gave a global sum of MK7,000,000.00 as compensation on 17<sup>th</sup> July 2012.
- ***Louise Chakwantha v Prime Insurance Company Limited*** High Court, Principal Registry, Civil Cause Number 2195 of 2010. The Plaintiff sustained a fractured left fibula bone, multiple soft tissue injuries and a swollen leg. The Plaintiff was admitted at St Luke's Mission Hospital at Chilema in Zomba before being transferred to Zomba Central Hospital where he was admitted. At Zomba Central Hospital his leg was cast in Plaster of Paris and upon his discharge was treated as an outpatient at Queen Elizabeth Central. Unfortunately, the POP was replaced because the leg continued to swell. His leg was cast in a POP for two months and his degree of incapacity is 35%. The Assistant Registrar awarded MK4,500,000.00 as damages for pain and suffering, MK1,500,000.00 as damages for loss of amenities of life, MK150,000.00 for disfigurement and MK2,000.00 as special damages for being cost of a police report. A total sum of MK6,152,000.00 was awarded to the Plaintiff on 10<sup>th</sup> August 2012 by the Assistant Registrar.
- ***Rex Walala v Davison Chikuta and Prime Insurance Company Limited*** High Court, Zomba District Registry, Personal Injury Cause Number 461 of 2011. The Plaintiff sustained an open fracture of the left tibia, bruises on the left arm and cuts on his face. The Plaintiff was admitted at Queen Elizabeth Central Hospital for 11 days. The Plaintiff's leg is severely deformed, it is now bent and shortened. He walks with a limp and cannot walk properly. His incapacity was pegged at 50%. The Plaintiff was awarded the sum of MK2,500,000.00 as damages for pain and suffering, MK3,000,000.00 for loss of amenities of life and MK1,000,000.00 for deformity. And MK4,500.00 being special damages for the cost of procuring police and medical reports. This award was made on 20<sup>th</sup> March 2013 by the Assistant Registrar.



- ***Christina Mande v Charter Insurance Company Limited***, High Court, Principal Registry, Personal Injury Cause Number 329 of 2016. The Plaintiff sustained a fracture of the right femur (inclusive of the knee cap), dislocation of the right hip joint, cuts on the head and lost consciousness on the spot of the accident. Surgery was performed on the patella/knee cap and metal rods inserted to hold the joint together. The Plaintiff was treated as an outpatient at Queen Elizabeth Central Hospital for one and a half months and can no longer perform the seasonal employment she once did with Illovo Sugar Company. The Plaintiff was awarded MK6,300,000.00 for pain and suffering, loss of amenities of life and disfigurement.

Counsel for the Plaintiff proposed a quantum of MK10,000,000.00 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 fracture of the knee joint of the right leg, fracture of the right lower leg, fracture of the ankle of the right leg, a cut on the left leg and a cut and bruises on the right elbow. The Plaintiff was also hospitalized for 27 days, almost one month.

The Plaintiff in the ***Christina Mande Case*** sustained injuries very similar to the Plaintiffs. Christina Mande sustained a fractured femur, dislocation of the right hip joint, cuts on the head and had surgery performed on the patella/knee cap that resulted in insertion of metal rods. Both Plaintiffs have been left with rods in their legs and had to undergo surgery to have them placed. This also resulted in lengthy hospital admissions and being treated as outpatients for lengthy periods as well. As well as failure to resume their previous occupations. In the ***Christina Mande Case***, MK6,300,000.00 was awarded to the Plaintiff in January 2017. This is the award that's closest in time to the assessment currently in consideration by the Court. However, in the present case the Plaintiff is a driver by profession and he can no longer drive with ease due to the deformity and pain in his legs. The loss of full use of his legs has more impact on him and his livelihood in comparison to Christina Mande.

In the ***Felista Kachaso Case*** the Plaintiff was hospitalised for 18 days and was awarded MK5,600,000.00; in the ***Zuze Bonjesi Case*** the Plaintiff was hospitalised for 3 months and was awarded MK7,000,000.00; and in the ***Rex Walala Case*** the Plaintiff was hospitalised for 11 days that resulted in a severely deformed leg and was awarded MK6,504,500.00. Length of time spent in the hospital is worthy of consideration. Suffering is defined as: “‘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 herein, was hospitalised for 27 days during which he underwent

the procedure that placed metal rods in his leg. His leg was broken in three places and he required constant medical attention. This court finds that the Plaintiff underwent immense suffering during his hospitalisation.

As stated the Plaintiff claims a total sum of MK10,000,000.00 for the injuries sustained by the Plaintiff. However, I believe this may be excessive. The assertion that the Kwacha has been devalued by about 200% is not supported by any evidence from Counsel.

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 case of Christina Mande was delivered just last month and is fairly reflective of the value of the Kwacha at this moment. The only distinguishing factor would be the extent of the consequences of the incapacitated limbs on the two Plaintiffs as stated above.

The Plaintiff is therefore awarded MK5,000,000.00 for pain and suffering, MK1,000,000 for loss of amenities of life, MK1,000,000.00 for disfigurement and costs of the action (to be taxed if not agreed).

Compensation totals a global sum of MK7,000,000.00.

Each party is at liberty to appeal to a Judge in chambers within seven (7) days.

Ordered in Chambers on the 16<sup>th</sup> day of February 2017 at Chichiri, Blantyre

  
CM Mandala

**ASSISTANT REGISTRAR**