



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY NUMBER 22 OF 2016**

BETWEEN

KENNEDY K NYIRENDA.....PLAINTIFF

AND

**KONDWANI MSUMBA.....FIRST DEFENDANT
PRIME INSURANCE COMPANY.....SECOND DEFENDANT**

RULING ON ASSESMENT OF DAMAGES

CORAM:

HONOURABLE MZONDE MVULA	: ASSISTANT REGISTRAR PRESIDING
M R. KAPOTO	: OF COUNSEL FOR PLAINTIFF
RESPONDENTS	: ABSENT (WITHOUT REASON)
MRS J. CHILIMAMPUNGA	: COURT CLERK & OFFICIAL INTEPRETER

ORDER

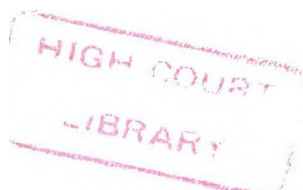
1.0 INTRODUCTION

The plaintiff took out a writ of summons on 27th January 2016 claiming negligence which occurred on the heels of a motor vehicle accident that occurred on or about 2nd August 2014. By Judgment through default in entry of defence by the defendants, the applicant succeeded in damages for pain and suffering and loss of amenities of life, damages for disfigurement, which damages to be assessed by the registrar. There was also a claim for special damages being costs for Police and Medical Report, as well as costs for the action to be borne by the defendant. Matter was set down for assessment on 1st June 2017 at 9.30.00am, on which date both defendants were absent. On proof of due service, we proceed to deliver the order as follows:

2.0 THE LAW

2.1 The accident

The applicant under oath submitted that he was cycling from the direction of Bakhresa Company heading towards Tairanana road junction on his way to Makheta. Near Royale Chemicals, he had stopped to give way. At this spot he was hit by a truck driven by the first defendant. He sustained a big cut wound on the anterior aspect of the right ankle and he was rushed to Queen Elizabeth Central Hospital where he received 12 stitches. The wound has healed but it has left a permanent scar, he finds ugly, on the anterior aspect of the right ankle. Post trauma effect is numbness and sometimes persistent pain



on the right ankle. The plaintiff was aged 60 at time of the accident. This was in 2014. His level of incapacity was assessed at 6%.

The issue for determination is how much the plaintiff should be paid under each head of th claim herein.

2.2 Damages for pain and suffering

The applicant submits that the court should look at the figure that will put the plaintiff in a position he would have been had the tort not been committed. See **Livingston v. Raywards Coal Co. (1880) 5 A.C 25**. The Court said on p.39:

"where any injury is to be compensated by damages in settling a sum of money to be given as damages, you should as nearly as possible get at a sum of money which will put the party who has been injured in the same position he would have been if he had not sustained the injury for which he is now claiming compensation"

The Court draws reference to the case of **Elida Bello v. Prime Insurance Company Limited civil cause 177 of 2012**. The plaintiff in that case sustained a deep cut wound on the left leg and another on the head. She was awarded the sum of K2, 500,000.00 on 1 41h January 2013. In a related development, in **Elizabeth Mmadi and Magret Mmadi v. Reunion Insurance Company personal Injury cause 385 of 2011**, the first applicant suffered cut wounds and injuries. She was awarded K550, 000.00 for pain and suffering. This was made on 3rd May 2012. In **Wonderson Mbeta v. Steve Adam and Prime Insurance Company Limited civil cause 178 of 2011**, the plaintiff suffered a deep cut wound on the left side of the head, bruises on the right foot and ear, and cut in the right eye. He was awarded K2,000,000.00 as damages for pain suffering and loss of amenities of life. This was on 20th January 2013.

In the instant case, it was observed that the plaintiff sustained a deep cut wound from the laces to inside the ankle. Scar and bruises on his leg are still visible. Little wonder he submitted he still feels pain especially when he foots a distance. He is now aged 62 and since age has caught the better of him, chances are this injury will never fully heal. Considering that the plaintiff is aged, but it was pleasing that despite the injury he was able to climb the steps and give evidence at Court as well as go about his daily business, I feel the sum of K1, 200, 000 would adequately compensate him with 6% incapacitation for damages for pain suffering and loss of amenities of life.

2.3 Disfigurement

It is clear that the accident left a permanent scar on the leg for the plaintiff. He has been disfigured for the rest of his mortal life. In **Kennedy Mphepo v. Charter Insurance Co Ltd, Civil cause 88 of 2012**, the court awarded K600, 000 as damages for disfigurement. This being in 2017, with devaluation I shall add K100,000 under this head. The applicant submitted cases for me to consider to mete out what the plaintiff considers and appropriate compensation in the circumstances. I have perused through the cases as well as other decided cases on the point. A balance of the measure and fair exercise of judicial discretion has led me to arrive at the quantum in this matter.

2.4 Special damages

The applicant submitted under exhibit, a medical report as well as police report in support of his claim. I shall award the cost of K10,500 as cost for obtaining a medical report and K3,000 for the police report bringing special damages to K13,500.00

3.0 Conclusion

Against the foregoing I shall make the following awards for the plaintiff

Damages for pain suffering and loss of amenities of life	K 1, 200, 000.00
Damages for disfigurement	K 700, 000.00
Special damages	
Medical report	K 10,500.00
Police report	K 3,000.00
Total Compensation	K 1, 940, 500.00

3.1 Costs

Costs are in the discretion of the court. In most cases, costs follow the event. In this case therefore, I will award costs to the plaintiff, who succeeded in his claim against the defendants.

3.2 Right of Appeal

Any party dissatisfied with the assessment has a right of appeal to a Judge in Chambers within 30 days of this order.

Made in Court this 20th June 2017

Mzonde Mvula
ASSISTANT REGISTRAR.