



**MALAWI JUDICIARY**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NO. 329 OF 2016**

**BETWEEN:**

**CHRISTINA MANDE ..... PLAINTIFF**

**AND**

**CHARTER INSURANCE COMPANY LIMITED ..... DEFENDANT**

**CORAM: K. BANDA, ASSISTANT REGISTRAR**

Mr. C. Kalua, Counsel for the plaintiff.

Mr.J Kandeya, Counsel for the defendant.

Mrs Chimang'anga, Court Clerk.

**ORDER ON ASSESMENT**

**BRIEF BACKGROUND**

It was on 16th February, 2016 when the plaintiff, as a pillion passenger together with the husband as the cyclist, were violently hit by a negligently driven vehicle insured by the defendants. For the purposes of certainty the registration number of the vehicle was BU 9191, Toyota Corolla saloon. This all happened at Billy village along the Bangula/Nchalo Road. They all got injured and hence the matter before me for assessment of damages. All issues of liability were settled by consent order dated 25th October, 2016.

**CLAIMS**

As to the claims, the plaintiff claims damages for pain, suffering and loss of amenities of life. She also asks for special damages as pleaded namely: costs of police and medical reports (MK3, 000.00 and M K 10,000.00), totaling M K13, 000.00.



## EVIDENCE

At trial the defendants did not appear despite notice of the proceedings. However noting that there was an affidavit of service, and on plaintiff counsels application to proceed, this court had no reservations but to agree. Essentially therefore all plaintiffs' evidence given under oath was uncontested. In short the plaintiff adopted her witness statement, marked as **Exhibit P1** in its entirety filed earlier with the court. She also tendered in evidence the Medical report marked as **Exhibit P 2** and Police report marked also as **Exhibited P 3**.

As to the injuries, she informed the court that she 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. She averred that a surgery was done on her right leg to wit on the patella/knee cap that has resulted into the insertion of two metal rods to hold the joint together. The operation though successful she avers, has resulted in creating continued feeling of numbness to the leg each time she walks. That she spent one and a half months in getting treatment at Queen Elizabeth Central Hospital. She avers that the major impact on her life is that now she cannot do anything she used to. For instance she averred she can no longer do farming or piece work at ILLOVO Company where she normally used to do piece works before the accident. Making it impossible to earn a living.

Her medical report shows that her permanent incapacity was put at twenty percent and that she would suffer post trauma pains requiring her to take analgesics for long.

## PRINCIPLES OF LAW ON ASSESSMENT OF DAMAGES

The policy of the law on damages generally is, if money can do it, to afford the victim fullest compensation so as to bring the victim to the position before the wrong. See. **Chidule v Medi** (1993) M.S.C.A. And Lord Blackburn in **Livingstone v Rawyards Coal Co.** (1880) 5 App.Cas. 25 at 39, puts it this way:

***" that 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, if he had not sustained the wrong for which he is now getting his compensation or reparation."***

In essence compensation for damages in this instance is not meant to be punitive. According to Holmes J statement in *Pitt v Economic Insurance Company Ltd* (3) SA 284(0) 287E-F compensation;

*"...must be fair to both sides-it must give compensation to the plaintiff, but must not pour out largesse from the horn of plenty at the defendants expense"*

However it is not easy to maintain consistency and achieve fairness to both the victim and the defendant unless the court awards damages on the basis of comparable awards in cases of similar nature. Lord Diplock in *Wright v British Railway Board* (1938) AC.1173, 1177, puts it this way:

*"Non-economic loss...is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to all litigation should be even-handed instead of depending on idiosyncrasies of the assessor, whether judge or jury, the figure must be basically a conventional figure derived from experience and from awards in comparable cases."*

It must be noted however that this the court will do without losing site of the fact that even though money can compensate to an extent, the truth remains that it cannot exact the experience to remain as it was before the event giving rise to the action. Lord Morris in *West v Sheppard* [1964] AC 326 summarized it this way;

*"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. "*

Maintenance of the value of money is a factor to be considered to ensure that the wrongdoer does not gain an advantage over the victim. Mwaungulu J (as he then was) in *George Sakonda v S R Nicholas*, Civil Appeal Number 67 of 2013(HC) (PR) (unrep) commented on this need to maintain value of money on assessment so that the plaintiff does not lose out. This is what the learned judge stated:

*"Moreover, conventional awards must factor inflation and value of money changes. Awards made at a higher value of the money and low inflation cannot compare to similar awards at lower value of money and high inflation. Victims stand to lose; wrongdoers stand to gain. Courts must therefore regard money value and inflation. "*

And earlier on in *Tembo v City of Blantyre* (1994) Civil Cause No.1355 (HC) (PR), Mwaungulu J expressed his position explicitly on views to the contrary in this manner;

*"...any other view involves the necessary implication that the victims of personal injuries should bear a reduction in the level of their compensation as the value of money falls though there is no rational justification for such reduction"*

It follows that though courts have a duty to ensure that damages do not become at large, the same should not at the minimum, in cases of assessment of damages for pain and suffering, disregard the individual endurance and facts of each particular case as was rightly put in *Chidule v Medi*(*ibid*).

## DISPOSAL

### PAIN, SUFFERING AND LOSS OF AMENITIES OF LIFE

As earlier indicated the plaintiff herein claims damages for pain, suffering and loss of amenities of life and costs of the medical and police report. For a start pain is the immediately felt effect on nerve and brain of some lesion or injury to the part of the body. On the other hand 'suffering' is distress which is not felt as being directly connected with any bodily condition. As for loss of amenities of life the same concentrates on the curtailment of the plaintiff's enjoyment of life by his inability to pursue the activities he pursued before the injury. Per Brickett L.J in *Manley v. Rugby Portland Cement Co.*(1951)C.A. reported in Kemp and Kemp, *The Quantum of damages*, Vol .1 (2nd Ed)., 1961,p.624.2

The plaintiff as earlier alluded states that she was violently hit and lost conscious immediately. That her knee cap got damaged in the process and two metal rods were inserted upon surgery to try to maintain the original position. She now feels numbness and

continuous pain despite spending over one and a half month in the hospital for treatment. This needs no further discourse that the plaintiff has had it; Pain of fairly higher magnitude or proportion if better put.

Again that said on pain, it needs no further proof that she has equally suffered from this injury. The trauma of having to live each day in anxiety as to how she is going to make ends meet because of the injury; the long stay in the hospital and other incidentals inherent to situations when one without means is hospitalized, no doubt causes psychological trauma. And if that is not enough, the farming and piece work at Illovo cannot be undertaken any more. This is a clear demonstration of a total curtailment of activities she used to perform.

Counsel cited the cases of **Luwiza fames v Prime Insurance Company Limited**, Civil cause No.1216 of 2009 and **Norah Malichi v Prime Insurance Company Limited, Civil** Cause No.2613 of 2009. In the first case the plaintiff sustained a fracture of the right femur and knee cap, a deep cut on the right eyelid and lost consciousness. She was hospitalized for 12 days. Metal pieces were inserted on the knee and thigh as part of treatment which makes her feel pain during cold seasons. The leg was shortened by 1cm. she was awarded the sum of MK5, 000,000.00 for pain, suffering and loss of amenities of life. The award was on 12 October, 2012. Comparatively the facts in that case to an extent resonate with the facts herein. However I note that the period spent in hospital was 12 days unlike the one and half month period in the matter herein. On the other hand, I note also that there was a reduction of 1cm of the leg in the Luwiza case. The same was not the case herein. I should think comparatively the two cases had many similarities though each was complex and serious in its own way. I am for the reason of similarities of facts inclined to consider the award in the above cited case in my assessment herein.

And as to the second case, the plaintiff sustained a fracture of the Tibia, cut wounds on the scalp, bruises on the face and swollen head. She was admitted for about a month. An award of MK4, 500,000.00 was made on 29th May, 2012. I have considered this case with a critical mind and find that it is similar in some instances but not completely closer to the case herein. It is my considered view that it is less serious and I decline to follow it herein.

Now considering the period between now and the time these awards were made and most importantly without losing sight of the issues of inflation and fluctuation of the kwacha as alluded to earlier, I consider the award of MKS, 500,000.00 for pain, suffering and loss of amenities of life as a reasonable sum and do award the same.

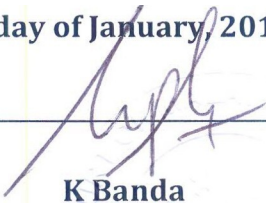
#### **DISFIGUREMENT**

I have had recourse to comparable cases of awards on disfigurement. One such case is that of ***Maclaud Makunganya v Prime Insurance Company Limited***, Civil Cause No.3 of 2009 pronounced on 22nd February, 2010. In that case the plaintiff was awarded the sum of M K700,000.00 for disfigurement. In that case the plaintiff had a lump on the thigh with a scar following a fracture sustained on the same. Reverting to the matter before me I note that the situation is not significantly different and I am satisfied that an award of MK 800,000.00 would do and I so order the same.

Essentially therefore I award the sum of M K6,300,000.00 for pain and suffering, loss of amenities of life and disfigurement. In making this award I am cautious of the fact that this will cover even those circumstances that may arise out of the same situation long after this assessment is done.

Costs to the plaintiff and the same to be assessed by the court.

**Ordered in Chambers this 11<sup>th</sup> day of January, 2017 here at Chichiri, Blantyre.**



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**K Banda**

**ASSISTANT REGISTRAR**