



**REPUBLIC OF MALAWI**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NO. 909 OF 2014**

**BETWEEN:**

**AGNESS KATCHOWA.....CLAIMANT**

**AND**

**EDGAR MANGULENJE .....1<sup>ST</sup> DEFENDANT**

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

**CORAM: Texious Masoamphambe Deputy Registrar**

Mr D. Jere, Counsel for the Claimant

Mr. Chipembere, Counsel for the Defendant

D. Nkangala, Official Interpreter

Date of hearing: 7<sup>th</sup> November, 2018

Date of delivery of the order: 13<sup>th</sup> December, 2018

**ASSESSMENT ORDER**

**INTRODUCTION**

The Claimant commenced the present action on 15<sup>th</sup> September, 2014 by way of writ of summons seeking damages for pain and suffering, loss of amenities of life, disfigurement and the cost of this action.

This is an order for assessment of damages pursuant to a judgment entered on 11<sup>th</sup> November, 2016 by the Honorable Justice H. Potani. It was adjudged that the Defendants were liable and that the Defendants should compensate the claim for pain and suffering, loss of amenities of life, disfigurement and the costs for this action.

### **EVIDENCE**

The Claimant was the only witness for his own case. She did not call any other. She adopted her witness statement that she filed with the court earlier on, under oath.

It was in her testimony that on 15<sup>th</sup> July, 2014 she was involved in a road traffic accident. She averred that 1st Defendant was driving a motor vehicle Registration Number BLK 4079 from direction of Balaka main market heading towards Mthandizi market. Upon arrival at Admarc lines he negligently swerved to the right dirty verge and hit the Claimant. The 2<sup>nd</sup> Defendant was the insurer of the material vehicle.

As a result of the accident, the Claimant sustained severe injuries as follows; fractured clavicle, sprained shoulder joint, deep cut wound on scalp, blunt chest injury and bruises on the left elbow.

### **ISSUE**

The court is now invited to assess damages payable to the Claimant for pain, suffering, loss of amenities of life and disfigurement.

### **ANALYSIS AND DETERMINATION**

In the law of tort, the purpose of an award of damages is to as much as money can do it, place the claimant in a position as if he had not suffered the damage. In **Elida Bello v Prime Insurance Company Limited, Civil Cause Number. 177 of 2012** the court stated that the law demands that the Plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. In law, it is what is referred in as *restitution in intergrum*. This was held in the case of **Victoria Laundry v Newman (1949) 2 KB, 528.**

Damages is the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of the losses he has suffered. The case of **George Kankhuni v Shire Buslines Ltd, Civil Case Number 1905 of 2002** is instructive in this regard.

However, it has to be noted that it is not possible to quantify damages for pain and suffering, loss of amenities and disfigurement as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. See **Kalinda v Attorney General (1992)15 MLR. 170**. As such this court will have a look at comparable cases to arrive at the appropriate quantification of damages for the claimant.

### **Pain and Suffering**

With regard to damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. This was propounded in the case of **Lemon Banda and 19 others v Motta Engil Limited and General Alliance Insurance Limited, personal injury case number 178 of 2012 (unreported)**.

In the case of **Eliza Stanford, Mcfally Dimingu, Fanes Meke and Fanita Chavi v Nico General Insurance Company Limited and Attorney General, Civil Cause Number 328 of 2012**, where the 1<sup>st</sup> claimant suffered a ruptured viscera. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants fractured ribs, the Court awarded 1<sup>st</sup> Claimant the sum of MK 3,500,000.00 as damages for pain and suffering and loss of amenities of life. This award was made in October, 2012. The injuries were severe and more serious like in the present case.

Again, in the case of **Zuze Bonjesi v Prime Insurance Co. ltd, Civil Cause N. 488 of 2011**, the Plaintiff suffered a fracture of the left tibia, a big wound exposing the bone and tendons and a deep wound on the right leg. She was awarded the sum of MK 7, 000,000.00 for the pain and suffering. This award was made way back in 17<sup>th</sup> July, 2012. The injuries were severe and more serious than in the present case.

It cannot be disputed that Claimant went through a lot of pain and suffered physically and emotionally on the spot of the accident. The Claimant experienced a lot of pain as she fractured left clavicle and shoulder. She also suffered a blunt chest injury and bruises on the left elbow. Therefore, the award of MK 2,500,000.00 is reasonably adequate to compensate the Claimant for pain and suffering.

### **Loss of Amenities of Life**

Damages are paid under this strand of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life, which amounts to substantial loss, whether the Claimant is aware or not of that loss. See **City of Blantyre v Sagawa (1993)16 (1) MLR 67 (SCA)**.

In the case of **Lundu v Prime Insurance Co Ltd, Civil Cause Number 903 of 2014**, the court awarded the sum of MK 750,000.00 on 22<sup>nd</sup> May, 2017 as the damages for loss of amenities of life. The court in that case appreciated that the fact that injuries are capable of limiting the pleasures of life that would be enjoyed before, and in future, if not for the injuries.

In **Louise Chakwantha v Prime Insurance Company Limited, Civil Cause No.2195 of 2010**, the claimant stated that as a result of injuries he suffered he was unable to jog, which was his sport. The Court awarded him the sum of MK 1,200,000.00 for loss of amenities of life.

In this present case, therefore, the award of MK 1,000,000.00 is adequate for loss of amenities of life to the Claimant.

### **Disfigurement.**

Damages are paid under the head of disfigurement for the change in in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but is capable of limiting a person from doing certain things as was observed in the case of **Austin Julius v Rasika Gunawardena and General Alliance Limited, Civil Cause Number 316 of 2014**.


In **Macloud Makunganya v Prime Insurance Company, Civil Cause No3 of 209**, the court awarded the Plaintiff MK 700,000.00 for disfigurement. In that case, the Plaintiff's disfigurement had a lump on the thigh accompanied by a scar.

I, therefore, award MK500, 000.00 as adequate compensation for disfigurement to the Claimant.

**Conclusion.**

In summary, the Claimant is awarded a total sum of MK4, 000,000.00 under all heads of damages. The defendants will bear the costs of this action.

Made in Chambers this 13<sup>th</sup> day of December, 2018.

  
**Texious Masoamphambe**  
**DEPUTY REGISTRAR**