



THE REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO.826 OF 2018

BETWEEN

Joston Mainala..... Plaintiff

and

Bright Maloya..... 1<sup>st</sup> Defendant

Prime Insurance Company..... 2nd Defendant

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CORAM:	<i>Madalitso Khoswe Chimwaza,</i>	<i>Assistant Registrar</i>
	<i>D. Silungwe,</i>	<i>Counsel for the Claimant</i>
	<i>C. Makoko</i>	<i>Counsel for Defendants</i>
	<i>Zude</i>	<i>Court Clerk</i>

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**ORDER ON ASSESSMENT OF DAMAGES**

**INTRODUCTION**

This matter was set down for assessment of damages following a default judgment dated 13<sup>th</sup> November, 2018 thereby settling the issue of liability.

Briefly the facts are that on or about the 16<sup>th</sup> July, 2018 the 1<sup>st</sup> defendant was driving motor vehicle Mazda Bongo registration number RU 8946 from the direction of Machinga going towards Zomba. Upon arrival at Ngom's Mills at Namwera Turn off Trading Centre he so negligently drove the motor vehicle attempting to overtake a pedal cyclists that in the process encroached further left and hit the claimant who was cycling a bicycle on the far left side of the road going the same direction. As a result the claimant sustained a severe dislocation of the right knee bruises on the knee, cuts on the face, feet and right wrist. Currently he cannot

walk long distances. In his witness statement the claimant said he used to do business of selling charcoal and he used to make K30,000 per month. He said he can no longer ply his business as he can no longer cycle a bicycle for long distances with loads of charcoal. According to his medical report he has 27% permanent incapacity. 'JM2a' and JM 2b

The claimant is now seeking damages for pain and suffering, disfigurement, loss of amenities of life loss of earning capacity and special damages of K6,000 for obtaining medical report.

#### **Issue for Determination**

How much damages should the claimant be awarded .

### **GENERAL PRINCIPLES ON DAMAGES**

A person who suffers injury as a result of another's negligence is entitled to be compensated for the injury suffered by the negligent party. Such damages are awarded to compensate the plaintiff in so far as money can do (see *Nakununkhe v Paulo Chakhumbira and Attorney General* Civil cause no.357 of 1997 (Unreported). As was held in the case of *Namwiyo v Semu et al* [1993] 16 (1) MLR 369, in awarding compensation, the court attempts to put the plaintiff in the position he would have been but for the injury arising from the tort. Such damages however cannot be quantified by any mathematical calculation as such the court relies on decided cases of a comparable nature for guidance. Sight must not be lost however, of peculiar facts of each case in order to avoid occasioning injustice by inflexible maintenance of consistency and uniformity (*D. Kwataine Malombe & Another vs. G.H. Chikho t/a Bec Line Minibus* Civil Cause No. 3687 of 2001 (HC Unreported).

#### **1. Pain and Suffering and Loss of Amenities of Life**

Pain is used to suggest physical experience of pain caused by and consequent upon the injury while suffering relates to the mental elements anxiety, fear, embarrassment and the like. On the other hand, loss of amenities of life embraces all that which reduces the plaintiff's enjoyment of life, his deprivation of amenity whether he is aware of it or not (See *City of Blantyre v Sagawa* [1993] 16 (1) MLR 67). In *Kanyoni v Attorney General* [1990] 13 MLR 169, 171 the court held that loss of amenities of life must include the loss of all the things the claimant used to be or to do, see, and experience-they need not be of leisurely nature at all. In the case of *Manley v Rugby Portland Cement and Company* [1950] No 286 (reported in Kemp and Kemp, "Quantum of Damages," Volume 1 2<sup>nd</sup> edition 1961 at p.2640) Birkett, LJ had this to say:

*"There is a head of damages which is sometimes called loss of amenities; the man-made blind by accident will no longer be able to see familiar things he has seen all his life, the man has both legs removed will never again go upon his walking excursions, things of that kind-loss of amenities."*

Although pain and suffering and loss of amenities for life are distinct however for purposes of quantum the court does consider them together and make a single award under those heads. (see *Henry Manyowa v. Phiri and Prime Insurance Co. Ltd* Personal Injury Cause No. 139/2012; *Andrew Katola v. Prime Insurance Co Ltd* Civil Cause No. 2807/2009).

In the present matter Counsel made submissions on separate heads to be awarded. Having considered comparable case awards like the case of *Banda and Ellen Banda vs Tutlas Fast save*,

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Civil cause No. 229 of 2016 in which the plaintiff suffered fractures of the thigh, traumatic amputation of the forearm an award of K7,000,000.00 was made for pain and suffering and loss of amenities of life.

The injuries in the present case are not of the same magnitude as the above case. The claimant sustained a dislocation of the right knee leg, bruises on the knee, cuts on the face, feet and right wrist. He can no longer cycle a bicycle for long distance which means the quality of life has been impaired.

In this case for pain and suffering and loss of amenities of life the plaintiff is **awarded a sum of K 2,500,000.00.**

## **2.Damages for Disfigurement**

Damages for disfigurement are awarded for permanent scars or deformity on the body of the plaintiff. Looking at some comparable cases like *Mbalame v. Prime Insurance Co Ltd* Personal Injury Cause No. 244/2014 and *Chipala v. Prime Insurance Co Ltd* Personal Injury Cause No.472/2013 where in 2015 the court awarded the sum of K950, 000 for disfigurement. In both cases there was limb shortening. Counsel cited the case of *Triza Lunduka vs Zenengeya and United General Insurance Company Ltd*, Civil Cause No. 1144 of 2016, a plaintiff who was left with a shortened leg and scars, was awarded the sum of K1,500,000.00. The award was made recently in 2017. This court finds the injury suffered by claimant not to have left visible disfigurement and a sum of K500,000.00 would be reasonable. The plaintiff is **awarded 500,000.00** for disfigurement.

## **3.Loss of Earnings and Earning Capacity**

Damages for loss of earning capacity, are awarded where the injuries suffered by the plaintiff results in the prospective loss of earnings or employability of the plaintiff. see case of *Tembo v City of Blantyre et al*, Civil Cause No. 1355/1994 (Unrep) Principle Registry.

Loss of earnings is the total loss or actual reduction in the income of the claimant as a result of the injury suffered. See **Kambwiri vs AG [1991] 14 MLR 151 (HC)**

In making submission for loss of earning capacity, plaintiff's counsel has asked the court to use the minimum wage since the actual earnings of the claimant are not known. It is claimed that before the injury the claimant used to do business of selling chacoal and he was making K30,000 per month which he has not been able to do since the accident.

According to the observation of the court during the hearing for assessment, the court noted that the claimant will be able to continue earning an income because the accident did not impair his earning capacity provided he get financial assistance. He was 28years old at the time of the accident this means he is still youthful and he is likely to get better as time goes by. Since he is going to get a lumpsum and also considering that anything may have happened along the way that could not have made it possible for him to live up to retirement age the court will use the multiplier of 20years.

The multiplicand will be the minimum wage of K962.00 per day (K25012.00 per month).

$K25,012.00 \times 12 \text{ months} \times 20 \text{ years} = K6,002,880.00$

The claimant is also awarded K6,000 special damages for obtaining police and medical reports

## **Order**

The total award made is **K10,509,600.00**. as damages for pain and suffering and loss of amenities of life, disfigurement and loss of earnings. The claimant is also awarded costs of this action to be taxed if parties do not agree.

Any party aggrieved by this order of assessment has the right to appeal.

Made in Chambers this 27<sup>th</sup> December, 2018



Madalitso K. Chimwaza

**ASSISTANT REGISTRAR- LILONGWE REGISTRY**

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