



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 14 OF 2015**

**BETWEEN**

**LAND MAWIRO ..... CLAIMANT**

**AND**

**ELIAS BAKULI ..... 1<sup>ST</sup> DEFENDANT**

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

**CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR**

Mwabungulu, of Counsel for the Claimant

Counsel for the Defendant, absent

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The plaintiff brought proceedings against the defendants claiming damages for pain and suffering, loss of amenities of life, and deformity and costs of the action. Judgment was entered for the claimant on 1<sup>st</sup> November, 2017. The matter has now come for assessment of damages.

## The Evidence

On 14<sup>th</sup> December, 2013 at around 20:00 hours, the 1<sup>st</sup> defendant was driving motor vehicle registration number BP 4688 Toyota Mark II along Nthukwa Market/Taiwan unnamed earth road. Upon arrival at Nthambo Electronics, the 1<sup>st</sup> defendant was making a U-turn. While in the process, his motor vehicle's rear tyres fell into a drain and got stuck. He then called some people who were nearby for help. These people were using some stones to bridge the gap of the drain. As the motor vehicle was accelerating, the rear tyres forced one of the stones to throw up and hit the claimant who was amongst the well-wishers who were helping the 1<sup>st</sup> defendant.

As a result of the accident the claimant sustained injuries. He sustained an open fracture of the left tibia. The wound was cleaned and the Plaster of Paris was applied on the fracture. He was in the Plaster of Paris for 8 ½ weeks. He was admitted on 14<sup>th</sup> December, 2013 and discharged on 15<sup>th</sup> December, 2013.

As a result of injuries the claimant sustained, he is unable to walk long distances as he still feels pain on his left leg.

The claimant is claiming special damages of K3,000.00 as costs for obtaining the Police Report.

## General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983] 2 AC 773**. The court, however, considers the time the awards were made and

currency devaluation – **Kuntenga and Another v Attorney General** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved - **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC).

#### **Pain and Suffering**

Pain and suffering is attributable to the claimant's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced – **Sakonda v S.R. Nicholas** Civil Appeal Cause No. 67 of 2013.

It is clear from the evidence that the claimant went through a lot of suffering and was in great pain and is still suffering. He sustained open fracture of the left tibia. The wound was dressed and he was on plaster of Paris for 8 ½. The fractured leg still gives him pain.

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

Loss of amenities is attributable to deprivation of the claimant's capacity to engage in some sport or past-time which he formerly enjoyed – **Kanyoni v Attorney General** [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

The claimant sustained open fracture of the left tibia. The fractured leg gives him pain and he is unable to walk long distances.

#### **Award of Damages**

In **Rex Walala v Davison Chikuta and Prime Insurance Company Limited** Civil Cause No. 461 of 2011, the claimant sustained fracture of the left tibia, bruises on the left arm and cuts on his face. He was awarded a sum of K6,500,000.00 as damages for personal injuries On 17<sup>th</sup> July, 2012. In **Louise Chakwantha v Prime Insurance**

**Company Limited** Civil Cause No. 461 of 2011 the claimant sustained fracture of the left tibia, multiple soft tissue injuries and swollen leg. He was awarded a sum of K6,150,000.00 as damages for personal injuries on 10<sup>th</sup> August, 2012.

The injuries suffered by the claimants in the above cited cases are more serious than the injuries suffered by the claimant in the present case. I, therefore, award the claimant a sum of K2,500,000.00 as damages for pain and suffering, and K1,000,000.00 as damages for loss of amenities of life. I also award him a sum of K3,000.00 as costs for obtaining the Police Report.

**Conclusion**

In conclusion, the claimant is hereby awarded total sum of K3,503,000.00. The claimant is awarded costs of this action.

Made in court this 11<sup>th</sup> day of June, 2018 at Blantyre.



**EDNA BODOLE (MRS)**

**ASSISTANT REGISTRAR**