



**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NO. 324 OF 2017**

**BETWEEN**

**SHADRECK MATEYU ..... CLAIMANT**

**AND**

**MR. ANDERSON MATAACHE ..... 1<sup>ST</sup> DEFENDANT**

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

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

Alide, 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 personal injuries he sustained in a road accident and costs of the action. Judgment was entered for the claimant on 6<sup>th</sup> February, 2017. The matter has now come for assessment of damages.

## The Evidence

On 31<sup>st</sup> January, 2015 the claimant was a passenger in motor vehicle registration number MJ 1087 Toyota Hilux Pick-up. This motor vehicle collided with motor vehicle registration number RTL 1123 Nissan Hard Body Double Cabin Pick-up. The accident occurred at Chiradzulu Turn Off along John Chilembwe Highway.

As a result of the accident, he sustained fractured pelvis, bruises over the face and hips, bladder contusions which resulted in him passing out bloody urine, painful pelvis and a painful left eye. He was taken to Queen Elizabeth Central Hospital where he received treatment of painkillers and wound dressing. He was admitted on 31<sup>st</sup> January, 2015 and discharged on 8<sup>th</sup> February, 2015.

As a result of the injuries the claimant sustained, he feels excruciating pain on his pelvis after sitting for a long time. He also feels excruciating pain on his left eye. He is able to do manual work but with difficulties and he cannot manage to run for a long distance.

He is, therefore, claiming damages for pain and suffering, loss of amenities of life and disfigurement. He is also claiming special damages of K13,500.00 as costs for obtaining the Police and medical reports.

## 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. In ***Renzo Benetollo v Attorney General and National Insurance Co. Ltd*** Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded.

### 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 fractured pelvis, bruises over the face and hips, bladder contusions which resulted in him passing out bloody urine, painful pelvis and a painful left eye. He was admitted at Queen Elizabeth Hospital for 9 days. He feels excruciating pain on his pelvis after sitting for a long time. He also feels excruciating pain on his left eye.

### 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 fractured pelvis. He is unable to sit down for a long time because he feels a lot of pain. He has difficulties in performing manual work and cannot manage to run for a long distance.

### Deformity/Disability

Disability is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. In ***Ching'amba v***

***Deerless Logistics Ltd*** Civil Cause No. 2888 of 2007 the court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently.

It can clearly be seen from the evidence that the claimant has been disfigured. He is unable to sit down for a long time because he feels a lot of pain. He has difficulties in performing manual work and cannot manage to run for a long distance.

#### Award of Damages

In ***Patricia Demesani Bannet v Isaac Lizimba and Another*** Civil Cause No. 811 of 2011, the claimant sustained a sprained right ankle, multiple bruises over the body and face. She was admitted at the hospital for a day. The court awarded the claimant a sum of K2,000,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 20<sup>th</sup> July, 2012. In ***Foster Kasokota v Davis Simenti and Prime Insurance Company Limited*** the claimant sustained a fracture of the pelvis and a dislocated left shoulder. He was awarded a sum of K3,900,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 11<sup>th</sup> December, 2012.

The injuries sustained by the claimant is more or less the same sustained by the claimants in the above-cited cases. 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, and K1,000,000.00 as damages for disfigurement.

#### Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount he is claiming for obtaining the medical report. If some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the claimant had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just.

I, therefore, award the claimant a sum of K2,500.00 as costs for obtaining the medical report. I also award the claimant a sum of K3,000.00 as costs for obtaining the Police report.

Conclusion

The claimant is awarded a total sum of K4,505,000.00. He is also awarded costs of the action.

Pronounced in court this 27<sup>th</sup> day of June, 2018 at Blantyre.



**E. BODOLE (MRS)**

**ASSISTANT REGISTRAR**