



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CASE NUMBER 566 OF 2013**

**BETWEEN:**

ALICK MANYAMBA

CLAIMANT

**-AND-**

MACDONALD BENGU

1<sup>ST</sup> DEFENDANT

PRIME INSURANCE COMPANY LIMITED

2<sup>ND</sup> DEFENDANT

**CORAM: JOSEPH CHIGONA, MASTER**

MR TED ROKA, OF COUNSEL FOR THE PLAINTIFF

DEFENDANTS ABSENT DESPITE SERVICE

**ORDER ON ASSESSMENT OF DAMAGES**

The plaintiff through counsel brought an action against the defendants for damages arising from an accident. The plaintiff commenced the present action through a writ that was issued on 5<sup>th</sup> June 2013. The plaintiff was, through a default judgment<sup>1</sup>, awarded damages for pain and suffering, loss of amenities of life and disfigurement plus costs of the action. The plaintiff suffered a deep cut on the forehead, at the back and nose. Suffice to mention that during the assessment proceedings, the defendants did not attend despite service. This left the evidence of the plaintiff unchallenged.

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<sup>1</sup> Dated 21<sup>st</sup> June 2013

## **THE FACTS AND EVIDENCE**

During the hearing of the assessment, the plaintiff was paraded as the only witness. Upon taking oath, he adopted his witness statement as his evidence-in-chief and all the exhibits attached thereto. In his witness statement, the plaintiff, whose address is box 5399, Limbe, states that on 20th May 2013, he was going to see his relatives in Chinamwali, Zomba. He submits that the 1<sup>st</sup> defendant gave him a lift on his motor vehicle registration number DA 1505, a Toyota Hilux Double Cabin as he was going the same direction (Zomba). He states that on arrival at Nyungwe, the 1<sup>st</sup> defendant wanted to overtake an Astra Truck registration number BG 282. In the process of overtaking, he lost control of the motor vehicle, whereupon the motor vehicle swerved to the extreme offside of the road and overturned. As a result of the accident, the plaintiff states that he sustained a deep cut on the forehead, cuts at the back, head and nose and multiple bruises as evidenced by **Exhibit AM 1**, a medical report. The plaintiff submits that he still feels pain on the forehead, nose and back. He says that due to the back injury, he cannot bend to do any manual work as he feels much pain. He states that he is unable to do basic chores such as sweeping and washing. He submits that the accident has left him disfigured as he has scars all over his body. He submits that he wants the defendants to compensate him.

## **THE LAW:**

As to the measure of damages the general rule is obtained in the speech of Blackman in **Livingstone -v- Rawyards Coal Company**<sup>2</sup>, where the measure of damages for compensation purposes was defined as follows:

'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.'

It was also stated in the case of **THE MEDIANA**<sup>3</sup> as follows:

'You very often cannot even lay down any principle upon which you can give damages...Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact sum of money which would represent such a thing as

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<sup>2</sup> (1880) A.C. 25 at page 39.

<sup>3</sup> (1900) A.C. 113, 116

the pain and suffering which a person has undergone by reason of the accident...'

We are mindful though that it is always a very difficult exercise to try to come up with compensation which will totally compensate the plaintiff with money for the injuries sustained and for the incapacity occasioned by the fault and negligence of the defendant.<sup>4</sup>

Courts, though, strive to award meaningful compensations and awards in comparable cases are always a welcome guide. Nevertheless courts ought to be mindful that no two cases are similar as each case is peculiar to itself. Lord Morris in **West -v- Shepherd**<sup>5</sup>, succinctly stated the position as follows:

'.....By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that as far as possible comparable injuries should be compensated by comparable awards. When all this is said, it still must be that the amounts which are awarded are to a considerable extent conventional. Actual compensation in personal injury cases is therefore impossible.'

This is what the law on compensation states.

## **THE AWARD**

### **DAMAGES FOR PAIN, SUFFERING AND LOSS OF AMENITIES OF LIFE:**

It is not disputed that the plaintiff suffered great pain as a result of the injuries he sustained and treatment he underwent. It is also not in dispute that the plaintiff has lost certain amenities of life as outlined in his witness statement.

In **JAMES GULULE V PRIME INSURANCE COMPANY LIMITED**<sup>6</sup>, the plaintiff who sustained soft tissue injuries on the left wrist and bruises at the back was awarded MK1, 100, 000 for pain and suffering and loss of amenities of life. In **CHIMWEMWE BULEYA V MIKE KUMILAMBE AND PRIME INSURANCE**<sup>7</sup>, the plaintiff who sustained two big cuts on the right side of the head and a big cut on the left cheek, and injuries to the shoulder was awarded MK1, 500, 000 for pain, suffering and loss of amenities of life.<sup>8</sup>

Reverting to the present case, I am of the humble view that a sum of **MK1, 150, 000** is adequate compensation for pain and suffering and loss of

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<sup>4</sup> supra

<sup>5</sup> (1964) A.C. 326, at page 346.

<sup>6</sup> Civil Cause Number 272 of 2012

<sup>7</sup> Civil Cause Number 2409 of 2008 (unreported)

<sup>8</sup> The award was made by His Honour Masoamphambe on 28<sup>th</sup> October 2009.

amenities of life. This sum is also sufficient for disfigurement suffered by the plaintiff.

On costs, I condemn the defendants to pay costs of the present action.

**MADE IN CHAMBERS** THIS 12<sup>TH</sup> DAY OF JUNE, <sup>2017</sup> AT CHICHIRI, PRINCIPAL REGISTRY.

  
JOSEPH CHIGONA

**REGISTRAR.**