



The Judiciary

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 730 OF 2016**

**Between**

**FRANCIS CHIKOTI..... CLAIMANT**

**-and-**

**UNITED GENERAL INSURANCE COMPANY LIMITED.....DEFENDANT**

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**CORAM: A.J. Banda, Assistant Registrar**

Mr. Kalua, for the Claimant

Mr. Machika, for the Defendant

Ms. Galafa, Clerk/ Official Interpreter

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Banda

**ASSESSMENT ORDER**

**1. Background**

The trial judge, the honourable Justice N'riva held that the defendant was liable as the insurer of the motor vehicle that hit the claimant as he was cycling at Bvumbwe Trading Centre on the Thyolo/Limbe road, in a judgment dated 18<sup>th</sup> May, 2018. The vehicle was held to have been negligently driven by Jafali Moses James. after the finding, the matter came before me for assessment of damages on 11<sup>th</sup> July, 2018.

**2. Evidence**

The claimant, Francis Chikoti was the only witness in the assessment hearing. In his evidence he told the court that he was hit by the motor vehicle registration number RU 5454/ BN 9610 Isuzu EXZ Truck on 21<sup>st</sup> June 2016 at Bvumbwe as he was cycling in the direction of Limbe from the direction of Thyolo. He said that he was knocked down by a mirror of the vehicle which came from behind him, heading into the same direction as him.

He said as a result of the accident he sustained head injuries, multiple cuts on the face, swollen face, he lost four teeth of the upper gum, had bruises on the right hand, a painful right leg that had bruises, and dislocation of the ribs. He went on to say that he had head injuries that has left him having a piercing feeling whenever he scratches his head in heed of an itch. He said he had injuries involving the eyes and he has difficulties in hearing.

Francis Chikoti told the court that he was taken to Thyolo District Hospital by police officers who were close to the scene. At the hospital, he had the facial wounds stitched and an x-ray done and he was given drips of water. He was also given iron tablets due to loss of blood. He said that he spent two and a half weeks in hospital. He tendered the police and medical reports. The medical report showed that the claimant's degree of permanent incapacity as a result of the incident was assessed at 20%, and that he will be performing jobs he was doing previously with difficulties.

The claimant further said that he has not completely healed as he still has hearing problems and he cannot see properly. He said he still walks with difficulties because of the pain he feels on the right leg. He also said that he feels pain in his ribs if he stands for long.

The claimant prayed that the court should make an order that he be compensated for the injuries he sustained but also that the bicycle be replaced as it was damaged beyond repair in the incident.

In cross examination, the claimant told the court that he was injured in the ribs and they were painful, when asked if he had any evidence to show that the ribs were dislocated. He said further that he had no x-ray pictures of his injuries.

### **3. Issue**

The issue the court has to resolve in this matter at this stage, is the amount of damages that the defendant should pay the claimant in compensation for the injuries and loss occasioned by the negligence of the defendant's insured.

### **4. Analysis of Law and Fact**

Damages are 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 all the losses she has suffered. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:



“The law demands that the plaintiff [now called the Claimant], as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*. ”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

#### Pain and Suffering

The word pain connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident, while suffering includes fright, fear of future disability, humiliation, embarrassment and sickness-Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8.

#### Loss of Amenities of Life

Damages are paid under the head 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); *Kemp and Kemp, The Quantum of damages, Vol .1 (2nd Ed).*, 1961, p.624.2**

#### Disfigurement

Damages are paid under the head of disfigurement for the change 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 it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014.**

#### This Case and Comparable Cases

In the instant case the claimant's injuries are as he stated in his evidence. I only join the defendant's counsel in doubting that the claimant had rib dislocation as it is a serious issue that should have been captured in the medical report he exhibited. It is not captured at all. It is more probable than not that he felt pain in the ribs from bruising and not dislocation per se. I also find missing in the report vital issues of sight and hearing. The claimant seemed to have difficulties hearing, when he appeared for the hearing.



In **Malisewo v Charter Insurance Company Ltd Civil Cause No. 915 of 2012** the plaintiff suffered a wound on the head and had hair scrapped off. He also suffered a fracture of the left tibia and fibula on the left leg, soft tissue injuries with abrasions and bruises, and was hospitalized for 21 days. He was awarded a sum of K2, 100,000.00 for pain and suffering and loss of amenities of life and K600,000.00 for disfigurement. The award was made on 29th October 2012. This award was made some time back, 6 years ago, such that the quantum could be more in present day given currency fluctuations. However, the injuries were more serious involving fracture of two bones of a limb than in this matter.

In the case of **Mjojo v Gaffar Suleiman and Prime Insurance Company Ltd. Civil Cause No. 1846 of 2003, High Court, Principal Registry (unreported)**, the court made an award of K95, 000.00 to a plaintiff who had lost four teeth, had a fracture of the right tibia and had suffered from some mental instability. In the case of **Atima Mphonda v. Mapando, Civil Cause No. 741 of 2001, High Court Principal Registry (unreported)** an award of K250 000 was made to a plaintiff who had lost all her upper teeth and six lower teeth. The plaintiff also suffered cuts and a fracture on the upper mandible that left her with a permanent scar on the upper lip. These two cases are more comparable in the nature of injuries but they are a bit too far in time of the awards to this instant matter.

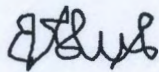
From the foregoing, considering comparable cases and the injuries sustained by Francis Chikoti I make an award of K 1, 550, 000.00 as damages for pain and suffering. I make an award of K1, 100,000.00 for loss of amenities of life. For the permanent and somewhat embarrassing change in his dental set up and facial image from the sutured wounds, I make an award of K900,000.00.

The claimant also prayed to be awarded special damages for the damaged bicycle. It was merely mentioned that he had his bicycle damaged. There was no proof of the fact and it was never pleaded in the first place. In any case even if it were pleaded and there was no evidence on which a quantum could ascertained by the court. I as such make no such award for that special damage. Again there is no evidence that the medical report costed the claimant money. I only make an award of K3, 000.00 for the cost of the police report, as that was paid for under general receipt number 2678766.

## **5. Conclusion**

I make an order that the defendant pay the sum of K3, 553, 000.00 as damages for the personal injuries and special damages as compensation to the claimant.

Made this 23<sup>rd</sup> day of July, 2018.



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**