



The Judiciary

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CASE NUMBER 526 OF 2017**

**Between**

**FRANCIS MAJAWA..... CLAIMANT**

**-and-**

**LAURENT CHIMUNGU..... 1<sup>ST</sup> DEFENDANT**

**UNITED GENERAL INSURANCE COMPANY ..... 2<sup>ND</sup> DEFENDANT**

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

Mr. Khan, for the Claimant

Mr. Kumwenda, for the Defendants

Mr. Mathanda, Clerk/ Official Interpreter

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Banda, Asst. Reg.

**ASSESSMENT ORDER**

**1. Background**

The parties settled the issue of liability in a mediation session before the honourable Justice Healey Potani when the defendant plainly admitted liability. The parties agreed that the quantum of damages and costs of the action was to be resolved by the parties within 7 days of the settlement agreement, which was signed by the parties, and endorsed by the judge on 26<sup>th</sup> January, 2018, failing which the matter had to be referred to the registrar. The parties apparently failed to agree on the issue of damages as a notice of assessment of damages was filed by the

claimant, and both parties did appear before me for the assessment hearing on the 26<sup>th</sup> of April, 2018.

## **2. Evidence**

Francis Majawa, the claimant, told the court that he was riding his motor cycle along the Zomba -Songani road when he was hit by a motor vehicle a Toyota Noah Station wagon, registration number CA 827 which was being driven by the 1<sup>st</sup> defendant and insured by the 2<sup>nd</sup> defendant.

The claimant further told the court that as a result of the incident he sustained a fracture just above the elbow joint of the left arm (supracondylar of the left arm), had multiple bruises, cuts on both legs and hands and head injury. He was taken to the Zomba Central Hospital for treatment where he was admitted for 13 days for suturing, dressing, debridement, application of pins to the fracture and treatment of analgesics.

Francis Majawa said that he had felt a lot of pain in the affected areas. He said that he cannot bend his arm properly and as such his arm is not very useable. He said that he cannot see properly and has difficulties to walk since the incident. He said that he has a likelihood of developing arthritis. He said that he has a degree of permanent incapacity at 30 %.

In further evidence given orally in court, he went on to state that he bumped his head on the ground and he bled from the nose.

The claimant said that he had his motor cycle damaged extensively. The parties through counsel had told the court that the issue repair costs had already been resolved at the agreed figure of K 657, 700.00 as quoted by the garage hired to do the repairs. He therefore prayed for damages for pain and suffering, loss of amenities of life and disfigurement, repair costs of the motor cycle and cost of the police and medical reports.



In cross examination, Mr. Majawa told the court that he was not a medical doctor himself but stated that he was informed by the medical practitioner that attended to him who also recorded in the claimant's health booklet, that it would take time for the claimant to completely heal. He said the defendants were furnished with a copy of that record in his health booklet.

### 3. Issue

The issue to be resolved by the court is the amount of damages that are applicable for the personal injuries; and whether the claimant should be awarded costs of the proceeding.

### 4. 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, 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.

### 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.**

Potani, J, in the case of **Chingámba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007**, stated that disfigurement was not something to be taken lightly and casually as a person lives with the deformity for the rest of his life. In **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J**, it was held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

### 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

### Comparable Cases



In the case of **Kondwani v. Monorurama Inter Bus Company Civil Cause number 240 of 2004, High Court Lilongwe Registry (unreported)**, a plaintiff who suffered a fracture of the elbow and contracture thereby, whose degree of permanent incapacity was assessed at 15% was awarded K80, 000 for pain and suffering in the year 2005. The plaintiff had pins inserted to hold the fractured bones in place.

In the case cited by the claimants' counsel, the case of **Praise Chitete (a suing through Clara Nkhata, her next friend v. Yotam Mdala and Prime insurance Co Ltd, Civil Cause Number 282 of 2014 (unreported))** a sum of K4, 800,000.00 was awarded for pain and suffering and loss of amenities of life for a fracture of the radius, a fracture of the ulna and multiple bruises of the left hand.

The defendant's counsel cited the case of **Julita Lombola v. Real Insurance Company Limited Civil Cause Number 14 of 2010**. In that case the plaintiff suffered a fracture on the upper arm, lost 11 teeth, and had cuts and bruises on the face and had been unconscious for two days after the accident and was admitted in hospital for 17 days. She was awarded K1, 550,000.00 as damages for pain and suffering and loss of amenities of life and disfigurement.

In the case **Chibwana v. Prime Insurance Co Ltd, Civil Cause No. 1760 of 2010 (unreported)**, a plaintiff who suffered a cut on the elbow and head injury was awarded K6, 500,000.00 damages for pain and suffering and loss of amenities of life. The defendant was no

#### This Case

The major injury that the claimant suffered is the fracture just above the elbow of the left arm. He also had multiple bruises, cuts on both legs and hands and unspecified head injury. On the aspect of the fracture and head injuries his case is similar to the Julita Lombola case cited by the defendant. In his case however, the head injury was the bump that caused nose bleeding. In my assessment based on evidence given and admitted, Julita Lombola's head injuries were somewhat more serious than the case here. She lost 11 teeth and had cuts on the face.

The case of **Kondwani v. Monorurama Inter Bus Company Civil Cause number 240 of 2004, High Court Lilongwe Registry (supra)** is closer to this case in terms of injury of the arm. However, this case is a bit more serious than the Kondwani case, as there were more other injuries than in that case. The claimant in this case also had cuts in the legs, and has a 30% degree of permanent incapacity than is the case with the Kondwani case. The assessment in the Kondwani case is 13 years old now.

Having considered the evidence on assessment, and the comparable cases taking available, I award the claimant here in **K2, 150,000.00** as damages for pain and suffering, **K1,020,000.00** damages for loss of amenities of life and **K850,000.00** damages for disfigurement.

## **5. Conclusion**

The claimant is hereby awarded a total sum of K4, 020,000.00 as damages for personal injury that the defendants are liable for. The claimant is also awarded costs for the repair of the damaged motor cycle as already agreed between the two parties. The claimant should be further awarded costs of the assessment hearing which shall be assessed by the registrar if not agreeable between the two parties.

Made this 16<sup>th</sup> day of July, 2018



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**