



The Judiciary

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CASE NUMBER 488 OF 2014**

**Between**

**FLORENCE CHIDoola..... CLAIMANT**

**-and-**

**PETER B. CHILUNGA..... 1<sup>ST</sup> DEFENDANT**

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

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**CORAM: Austin Jesse Banda, Assistant Registrar**

Mr. D. Jere, for the Claimant

Mr. Z. Chipembere, for the Defendants

D. Nkangala, Clerk/ Official Interpreter

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Banda

**ASSESSMENT ORDER**

**1. Background**

The claimant filed a notice of assessment of damages before the registrar. The court heard the parties on assessment on 12<sup>th</sup> July, 2018. Only the claimant had a witness and it was the claimant herself.

**2. Evidence**

Florence Chidoola told the court that she was involved in a road traffic accident at Limbe Tavern within the city of Blantyre. Her foot was run over by the front near side tyre of the vehicle that was driven by Mr. Chilunga, and was insured by the Prime

Insurance Company Limited. As a result, she sustained a fracture of the distal right leg. She was treated at Queen Elizabeth Central Hospital. She said that she experienced a lot of excessive pain and suffering. She had the leg put in a Plaster of Paris. She said that she has developed arthritis. The medical report she exhibited further shows that she has a permanent degree of incapacity at 25%, and that she can no longer do sports. She says that she performs manual work with difficulties since then. She prayed to be compensated after judgment on liability was entered in her favour.

### 3. Issue

At the stage of assessment of damages, the assumption is that the issue of liability is settled. The issue therefore is the amount of damages that the defendants must pay as compensation to the claimant.

### 4. Analysis of Law and Evidence

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.**

Potani, J, in the case of **Chingámbe 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.

#### Comparable Cases

Both parties submitted cases that they felt were comparable to the case at hand. In my view, the injuries in all the cases cited by the claimant were more serious than the injuries that Florence Chidoola sustained. For instance, in the case of **Felista Kachaso v. Peter Kondowe and another, Civil Cause Number 320 of 2009**, the plaintiff sustained a fracture of the humerus, tibia and also of a pelvis, and the court awarded her K5, 600,000.00 Kwacha.

The defendant argues in favour of the use of the case **Charles Mauzu v. Wild Batson and Prime Insurance Personal Injury Case no. 77 of 2014** where a claimant sustained fractures of tibia and fibula on both legs, had multiple wounds on the right shoulder and the face, and deep cut wounds on the left and right leg. He was awarded K1,000,000.00 for pain and suffering, K1, 500,000.00 as damages for loss of amenities life, and K800,000.00 for deformity. The order for the awards was made on 16<sup>th</sup> June, 2017.

#### This Case

In my opinion, the case at hand judging from the evidence on record including the medical report shows that the claimant suffered a fracture of the distal right leg. There were no more injuries. This is not to state that she did not suffer damage and loss, but that it was not to the extent of the cases cited by the parties in comparison. The case of **Charles Mauzu** is therefore more comparable as in both cases the injuries involved a fracture of the bones in a leg, even though there were further injuries in the **Charles Mauzu** case, which the court has considered in coming up with the award. I have also considered the time taken between the awards, a period of 13 months.



In my view, a sum of **K1, 450,000.00** is adequate for pain and suffering. I also find a sum of **K1,000,000.00** as damages for loss of amenities of life. Apart from her participation in sports, that the claimant would like the court to believe has been affected by the injury without the requisite proof that she did participate in sports, there is nothing more that would affect the pleasure of life for the claimant arising out of the injury to her right leg. The medical report shows the broken bone is now united. There is no mention that the fracture was open and she sustained a wound. There are no scars as such. I award the claimant a sum of **K750,000.00** for deformity to acknowledge a change in her leg. Nothing broken mends perfectly to the same level as before it was unbroken. There could be a change in gait but nothing more out of deformity, in my opinion.

The claimant also prayed that the court should award special damages. Apart from the police report that shows a sum of K3,000.00 was paid for its issuance, under Government general receipt number 129039, there is no evidence that the medical report exhibited in the statement of the claimant was paid for by the sum claimed. Special damages must be specifically proved. I therefore award only **K3,000.00** as special damages.

## **5. Conclusion**

The claimant is hereby awarded a total sum of **K 3, 203,000.00** as damages for pain and suffering, loss of amenities and disfigurement. The claimant is also awarded costs of the assessment, to be assessed if the parties do not agree on the amount.

Made this 19<sup>th</sup> day July, 2018.



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**