



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO.537 OF 2016**



BETWEEN:

BERRINGTON MUNTHALI.....CLAIMANT

AND

LUMBANI GONDWE..... 1ST DEFENDANT

GENERAL ALLIANCE INSURANCE CO. LTD2ND DEFENDANT

CORAM

Mrs T. Soko	: Assistant Registrar
Mr Malijani	: Counsel for the claimant
Mr Chimbe	: Counsel for the defendant
Mrs Munthali	: Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

The claimant herein claims for damages for pain and suffering, loss of amenities of life, deformity, special damages and costs of the action. The facts are that on 14th May 2016, the Claimant was hit by a motor vehicle Toyota Corolla Saloon registration number ZA 18 which was driven by the 1st defendant along Mzuzu-Karonga road. The claimant sustained a fracture of the left distal radius and the right hand wrist was deformed.

EVIDENCE

In evidence, the claimant adopted a witness statement where he stated that he sustained a fracture of the right distal radius. He also stated that his right hand was deformed as a result he is unable to perform manual

work. The claimant stated that he was referred to Rumphi District Hospital where he was treated as an outpatient from 18th May 2016 to 16th June 2016. Further the claimant stated that he was diagnosed with partial hearing loss of the right ear. The claimant exhibited a copy of medical report as part of evidence.

In cross examination, the claimant stated that he sustained a fracture on the wrist and arm. He added that he had injuries on the finger. He said his arm was deformed not finger. He said he is unable to do manual work.

SUBMISSIONS

In submissions, Counsel for the Claimant prayed for a sum of K6, 000,000.00 as damages for pain and suffering and loss of amenities of life. Counsel also prayed for a sum of K800, 000.00 damages for disfigurement. Counsel for the claimant cited a case of **Nellie Manda vs Nico General Insurance Co Ltd Civil Cause No. 619 of 2009** where the Court made an award of K6, 500,000.00 damages for a fractured left arm, deep wound on the right thigh, bruises on the leg and cut wounds on the left thumb and finger. The award was made on 25th April 2012. In addition, Counsel cited a case of **Red Lucia vs James Mkandawire and Citizen Insurance Co Ltd Civil Cause Number 2442 of 2010** where the claimant was awarded a sum of K6, 000,000.00 for sustained fracture of tibia and humerus as well as head injuries. Counsel cited **Norah Malich (a minor suing by her father and next friend Henry Malich) vs Prime Insurance Ltd Civil Cause No. 3613 of 2009** where the claimant was awarded a sum of K4, 500,000.00 for sustaining a fracture of the left tibia, cut wound on the scalp, bruises on the faces and swollen head. The award was made in 2012. Lastly Counsel cited a case of **James Chaika vs NICO General Insurance Co. Ltd Civil Cause No. 909 of 2007** where the claimant was awarded a sum of K300, 000.00 for disfigurement only for a fracture of the leg which was shortened by 1 cm.

GENERAL LAW ON DAMAGES

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been if it would have not been for the tort committed. **See Namwiyo v Semu (1993) 16 (1) MLR 369.**

In calculating damages, therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. **See Admiralty Commisioners vs S.S Valeria (1992) 1 A.C. 242 at 248.**

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329 of 2016 the Court quoting Wright vs British Railway Board 1938 AC 1173, 1177 stated that:

'Non-economic loss... is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'

In the case of **City of Blantyre vs Sagawa** the court said the following:

'It would appear to us that if the award is to be conventional, an award for a similar injury should be comparable and should, to some extent, be influenced by amounts awarded in the previous case, either in the same or neighbouring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.'

PAIN AND SUFFERING

In damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).

In the City of Blantyre vs Sagawa 1993 16 (1) MLR 67 the court quoted Kemp and Kemp volume II paragraph 1007 where it was stated that;

Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like.

Page 831 of Mc Gregor on damages defines pain as the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering has been defined as the distress which is not felt as being directly connected with any bodily condition. Pain includes any pain caused by medical treatment or surgical operations rendered necessary by the injury inflicted by the defendant. Suffering includes fright at the time of the injury and fright reaction, fear of future incapacity, either as to health, sanity or the ability to

make a living, and humiliation, sadness and embarrassment caused by disfigurement. Also see **Gedion Mhango vs Nico General Insurance Co. Ltd Personal Injury Cause No. 703 of 2016 (unreported).**

LOSS OF AMENITIES OF LIFE

Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).**

Birkett L.J in **Manley vs Rugby Portland Cement Co. (1951) C.A No. 286** stated that there is a head of damage which is sometimes called loss of amenities, the man made blind by the accident will no longer be able to see familiar things he has seen all his life, the man who had both legs removed and will never again go upon his walking excursions- things of that kind- loss of amenities. Mc Gregor on damages at Page 834 explains that loss of impairment of any one or more of the five senses is compensated under this head. Besides loss resulting from interference with the plaintiff's sexual life.

DISFIGUREMENT

Disfigurement is concerned with change of looks of the individual. This may be scars, amputations and postures. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported.)** Damages for disfigurement are normally awarded as part of pain and suffering. They are awarded separately if the plaintiff has been ridiculed, lost his social status, or that his is in need of plastic surgery. **See Mary Kamwendo vs Stage coach Malawi Limited Civil Cause No. 840 of 1995.**

DETERMINATION

In the present matter, there is no dispute that the claimant sustained a fracture of a distal radius. A Plaster of Paris was applied on the fracture and he was treated as an outpatient from 18th May – 201th June 2016 which is more than a month. The claimant suffered 10% permanent incapacity. The treatment that the claimant received and the degree of incapacitation merely shows that the claimant did not go through severe pain and suffering. Authorities cited by counsel are therefore more serious than the injuries sustained by the claimant at hand. However, the medical report shows that the claimant's wrist healed with deformity. Due to the deformity the claimant has difficulties to perform manual work and his previous job as a farmer. It means his

life has been affected by the injuries he sustained. It also means he will live with the deformed wrist for the rest of his life something he never expected would happen to him. With the foregoing reasons and considering the circumstances of this case and devaluation of currency the Court awards the claimant a sum of K3, 500,000.00 in all heads of damages. The Claimant has failed to prove special damages and the Court will not make an award on that head.

Costs are for the claimant.

Pronounced in chambers on this ^{27th} day of August 2018.

A handwritten signature in dark ink, appearing to be 'T. Soko', written in a cursive style.

T. SOKO

ASSISTANT REGISTRAR