



**REPUBLIC OF MALAWI**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**Personal Injury Cause Number 636 of 2015**

**BETWEEN**

**HILDA BANDULA.....1<sup>ST</sup> CLAIMANT**

**PAUL MATHI..... 2<sup>ND</sup> CLAIMANT**

**PETERSON SAUTI.....3<sup>RD</sup> CLAIMANT**

**-AND-**

**CALLISTO MOMADE.....1<sup>ST</sup> DEFENDANT**

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

**CORAM: Texious S. Masoamphambe, Deputy Registrar**

Domasi, of counsel for the claimant

Chikaonda of counsel for the defendant

Doreen Mkangala, official interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

This is the court's order on assessment of damages following consent judgement on liability entered on 14<sup>th</sup> November 2017. The terms of consent judgement were that:

- a. liability be entered against the defendants;
- b. the 2<sup>nd</sup> defendants shall be at liberty to bring evidence during assessment to prove whether the insurance policy limit covering the motor vehicle in question has been exhausted; and
- c. the matter be set down for assessment of damages on the date to be fixed.

The facts of the case were that the 1<sup>st</sup> defendant was a driver of motor vehicles registration number **AADD 148NP /AA 116NP** Sinotruck/trailer traveling from the direction of Muloza Border towards Mulanje Boma. The 2<sup>nd</sup> defendant was insurer of the said vehicles under policy number **130497197/130497198** valid from 9<sup>th</sup> May 2015 to 8<sup>th</sup> June 2015

On 22<sup>nd</sup> May 2015, the 1<sup>st</sup> Defendant negligently drove the vehicles such that on arrival at Thornwood *ad hoc* Police Road block, he lost control of the vehicle hitting several objects including motor vehicle registration **MJ 5837** which the claimants had boarded. As a result of

the accident, the claimants sustained injuries. The 1<sup>st</sup> claimant suffered multiple cuts on her left leg and swollen left leg. She was subjected to suturing which was painful. Permanent incapacitation is pegged at 8%. The 2<sup>nd</sup> claimant suffered bruises on the neck, painful back and soft tissue injuries. Permanent incapacitation is pegged at 12%. The 3<sup>rd</sup> claimant suffered painful neck, painful left rib. Permanent incapacitation is pegged at 8%.

The claimants' claim damages for pain and suffering, loss of amenities of life and disfigurement. The claimants also claim special damages amounting K40,500 for medical and police reports.

### **Evidence**

All claimants were available to give evidence and adopted their filed witness statements. The defence did not conduct cross examination on any of the witnesses and did not bring a witness. The claimants' counsel further adopted filed skeleton arguments. The defence ask for 7 days to file the same.

### **Applicable Law**

As to the measure of damages the general rule is obtained in the observations of Blackburn in **Livingstone -v- Rawyards Coal Company (1880) 5 A C 25** 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 (1900) A.C. 113, 116** 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 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.

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 (1964) A.C. 326**, at page 346, 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.



### **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 Motal Engil Limited and General Alliance Insurance Limited, Personal Injury Cause Number 178 of 2012(unreported)**

In the case of **City of Blantyre v Sagawa 1993 16(1) MLR** the court quoted Kemp and Kemp volume 11 paragraph 1007 where it was suggested 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 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: see **Gedion Mhango v Nico General Insurance Co Ltd Personal Injury Cause 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 amputated and will never again go upon his walking excursions – things of that kind – loss of amenities. Mc. Gregor on damages at pages 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 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 awarded as part of pain and suffering. They are awarded separately if the claimant has been ridiculed, lost his social status, or that he is in need of plastic surgery. See **Mary Kamwendo Vs. Stage Coach Malawi Limited Civil Cause Number 840 of 1995**.

### **The Award**

I now further consider similar cases. In **Robert Piason & others v Prime Insurance Company Limited Personal Injury Cause No 413 of 2103** the 1<sup>st</sup> Claimant sustained a cut wound on the head, chest pains and painful right shoulder and was awarded MK3,000,000. This was made on 6<sup>th</sup> September 2014.

In the case of **Robert Pasion & others v Prime Insurance Company Limited, Personal Injury Cause** (supra) where the 3<sup>rd</sup> claimant sustained a painful left side of the head, painful left shoulder and painful left leg and she was awarded 3000000.this was also made on 6<sup>th</sup> September 2014

In **Owen Lyson Kayira and 2 others v Unusu Shaikh Civil Cause No 1160 of 2013** where the 2<sup>nd</sup> claimant was awarded MK2,500,000 for pain and suffering and loss of amenities of life having sustained head injury, multiple soft tissue injuries over the head and brain and lost consciousness on the spot. The award was made on the 1<sup>st</sup> June 2014.

Again, in **Malingaliro Elia & 2 Others v Paramount Electrical Engineering Co. Civil Cause No 215 of 2017**, the 1<sup>st</sup> claimant was awarded K2, 500,000 for general soft tissue injuries. An award made in August 2018

Further in **Kennedy Mphepo v Rashy Motors civil cause no 88 of 2012** the Claimant was awarded K2,000000 for pain and suffering and loss of amenities of life, K600,000 for general pains.

In present case, claimants are claiming K3,500000 each. In my view, that is high, considering that the injuries sustained were not all that serious. On the other hand, I don't think it is reasonable to award all claimants same amount as the injuries sustained varies. I therefore award the claimants as follows:

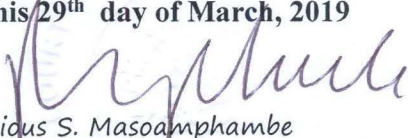
1<sup>st</sup> claimant I award K2, 000,000 to cover damages under all heads.

2<sup>nd</sup> claimant I award K1,500,000 to cover damages under all heads .

3<sup>rd</sup> claimant I award K1,500,000 to cover damages under all heads.

All claimants are further awarded special damages of K13,500 each as pleaded and costs for proceedings.

Made this 29<sup>th</sup> day of March, 2019

  
Texidus S. Masoamphambe  
DEPUTY REGISTRAR