



REPUBLIC OF MALAWI  
 IN THE HIGH COURT OF MALAWI  
 PRINCIPAL REGISTRY  
 PERSONAL INJURY CAUSE NO. 580 OF 2011

BETWEEN:

JEMUSON MAGANGA .....CLAIMANT

AND

PRIME INSURANCE CO. LTD .....DEFENDANT

**CORAM**

- |                |                             |
|----------------|-----------------------------|
| <b>T. Soko</b> | : Assistant Registrar       |
| Mr Kaluwa      | : Counsel for the claimant  |
| Mr Chikaonda   | : Counsel for the defendant |
| Mr Chimtengo   | : Official interpreter      |

**ORDER ON ASSESSMENT OF DAMAGES**

**BACKGROUND**

This is an order on assessment of damages following a judgment by Honourable Justice Mbvundula dated 11<sup>th</sup> March 2019. The claimant's claim is for damages for pain and suffering, loss of amenities of life, special damages and costs of the action. Facts from the statement of claim aver that on or about 18<sup>th</sup> August 2010, a motor vehicle registration number MHG 2968 Mazda Coaster in which the claimant was the passenger overturned to the extreme offside. As a result of the accident, the claimant sustained multiple injuries.

**EVIDENCE**

The claimant appeared as the sole witness. He stated that on 18<sup>th</sup> August 2010, he boarded a motor vehicle registration number MHG 2968 Mazda Coaster at Limbe Depot going to Ntaja. He sat in front of the seat. Upon reaching Mpilisi along Mchinga/Liwonde road, the tyre of the said motor vehicle burst and consequently the driver lost control of the vehicle that it left the road and overturned. The claimant said he lost consciousness on the spot and regained it after a period of about 3 weeks following the accident. He stated that he discovered that he was at Zomba Central Hospital and had sustained severe head injury, cut wound on the scalp, bruises on the right hand, severe bruises on the chest and soft tissue injuries to the right hand and on the hip. The claimant added that he remained hospitalized until 13<sup>th</sup> September 2010 when he was discharged. Afterwards, the claimant visited Limbe Health Centre for outpatient treatment and he attended health center for a period of 1 month. He said he no longer attends the hospital. Besides, the claimant said the injuries have healed but he experiences itching where he sustained bruises on the chest. He said the spot where he sustained a big cut on the scalp swells every morning. He complained that he experiences severe pains on the hip.

#### **SUBMISSIONS**

Counsel for the claimant prayed that the claimant should be awarded a sum of K9, 500,000.00 as damages. On the other hand, Counsel for the defendant submitted that the claimant should be awarded a sum of K2, 000,000.00 as damages. Both cited comparable cases and I appreciate counsel for the well-founded authorities.

#### **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. 329of 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 neighboring 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.*

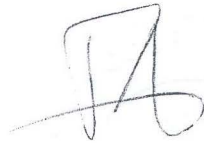
## DETERMINATION

The evidence is clear that the claimant sustained severe head injury and scalp cut wound. The claimant showed the court the scars on the head which is sufficient proof that he sustained those injuries. In addition, the claimant sustained soft tissue injuries. In the evidence, the claimant stated that he healed but sometimes he still feels pain and the scalp swells. Sometimes feels itching on the chest. Soon after the accident the claimant lost consciousness. The nature of the injuries and its effects show that the claimant sustained severe injuries. His incapacitation was pegged at 40%. Looking at the injuries I have considered a case of *Norah Malichi vs Prime Insurance Co Ltd Civil Cause No. 2613 of 2009* where the claimant sustained a **fracture of left tibia**, cut wounds on the scalp, bruises on the face and swollen head. In the matter at hand the claimant sustained head injuries and wounds on the scalp but there was no fracture. The court on 29<sup>th</sup> May 2012

awarded the claimant a sum of K4, 500,000.00. I have also considered Paul Chazama (On his own behalf and on behalf of the dependents of ivy Chamaza, deceased), Elaon Dzuwa and Chifundo Mnenula vs Efaward Nyirenda and Prime Insurance Co Ltd Personal Injury Cause No. 383 of 2013 where the court awarded K650,000.00 to the 2<sup>nd</sup> defendant for soft tissue injuries including bruises and cuts. The judgment was made on 22<sup>nd</sup> April 2016. Looking at the nature of injuries in the present matter, I find K650, 000.00 to be on the lower side. Looking at the Case of Malichi the claimant also sustained a fracture unlike in this case. I have also considered the devaluation of currency and therefore award a sum of K 4,700,000.00 in all heads of damages.

Costs are for the claimant

Made on this 3<sup>rd</sup> day of July 2019.



**T. SOKO**

**ASSISTANT REGISTRAR**