



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 311 OF 2018**

**BETWEEN**

**DOREEN MTEWA ..... CLAIMANT**

**AND**

**MR. CHRISTIAN CHIVUNDULA ..... 1<sup>ST</sup> DEFENDANT**

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

**CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR**

Khan, of Counsel for the Claimant

Chikaonda, of Counsel for the Defendants

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimant brought proceedings against the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages amounting to K13,500, and costs of the action. Judgment on liability against the defendants was entered on 2<sup>nd</sup> October, 2018.

## The Evidence

On 12<sup>th</sup> November, 2017 the claimant was hit by motor vehicle registration number BN 5346 Nissan Hard Body Double Cabin which was being driven by the 1<sup>st</sup> defendant. It was being driven from the direction of Chichiri roundabout heading towards Blantyre along Masauko Chipembere Highway.

As a result of the accident, the claimant sustained fracture of the right femur. She was taken to Queen Elizabeth Central Hospital where she received treatment of skeletal traction and pain killers. She was operated on the thigh and a sign nail was inserted in the thigh up to the knee. As a result of the injuries she sustained, she experiences excruciating pain on her knee and restricted full range of motion of the knee. She also experiences difficulties in walking and running. She has a big scar running through the side of the right thigh.

She is also claiming a sum of K13,500.00 which she used in procuring the Police and medical reports.

## Applicable Law and Analysis

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – ***Elida Bello v Prime Insurance Co. Ltd*** Civil Cause No. 177 of 2012.

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – ***Wright v British Railway Board [1983] 2 AC 773***. The court, however, considers the time the awards were made and currency devaluation – ***Kuntenga and Another v Attorney General*** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be

pleaded and proved - **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993.

#### Pain and Suffering

Pain and suffering is attributable to the claimant's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which she has been reduced – **Sakonda v S.R. Nicholas** Civil Appeal Cause No. 67 of 2013.

It is clear from the evidence that the claimant went through a lot of suffering and was in great pain and is still suffering. She went through the treatment of skeletal traction and pain killers. She was operated on the thigh whereby a sign nail was inserted from the thigh up to the knee. As a result of the injuries she sustained, she experiences excruciating pain on her knee and restricted full range of motion of the knee.

#### Loss of Amenities of Life

Loss of amenities is attributable to deprivation of the claimant's capacity to engage in some sport or past-time which she formerly enjoyed – **Kanyoni v Attorney General** [1990] 13 MLR 169. It means that she is incapable of performing some activities he used to do.

The claimant is unable to enjoy life as she used to as she experiences difficulties in walking and running.

#### Deformity/Disability

Disability is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. In **Ching'amba v Deerless Logistics Ltd** Civil Cause No. 2888 of 2007 the court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently.

The claimant has been disfigured in that she has a big scar running through her right thigh. She also has a sign nail in her right thigh which will be there for the rest of her life.

### Award of Damages

In *Nelson Mandela v Plem Construction Ltd and General Alliance Insurance Company Ltd* Civil Cause No. 283 of 2011 the claimant sustained fracture of the right leg, multiple cuts and bruises. He was awarded a sum of K4,500,000.00 as damages on 21<sup>st</sup> August, 2016. In *Robert Mose (suing as administrator of the Estate of Zakaria Robert (Deceased) and 5 Others v Lyson Benjamin Chapo, Prime Insurance Company Ltd and Symon Door* Personal Injury Cause No. 350 of 2015 the claimant sustained fracture of the tibia of the left leg, bruises on the lower right leg, cut on the lower chin and leg. He was awarded a sum of K3,300,000.00 on 21<sup>st</sup> August, 2016.

The injuries suffered by the claimants in the above-cited cases are comparable to the injuries suffered by the claimant in the present case. However, the claimant in the present case has a sign nail imbedded in her body which will be there for life. I, therefore, award the claimant a sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life, and disfigurement.

Special damages are supposed to be pleaded and proved. The claimant proved that he had spent K13,500.00 in order to procure the Police and medical reports. I, therefore, award her this sum.

### Conclusion

In conclusion, the claimant is awarded total sum of K6,013,500.00. The claimant is also awarded costs of this action.

Pronounced in court this 28<sup>th</sup> January, 2019 at Blantyre.



**EDNA BODOLE (MRS.)**

**ASSISTANT REGISTRAR**