



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 1 OF 2018**

**BETWEEN**

**PRISCA NANSANGWE ..... CLAIMANT**

**AND**

**MR. KELVIN CHNGWALU ..... 1<sup>ST</sup> DEFENDANT**

**CS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**UNITED GENERAL INSURANCE COMPANY LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**CORAM : HER HONOUR EDNA BODOLE, ASSISTANT REGISTRAR**

Master, of Counsel for the Claimant

Machika, 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, and costs of the action. Judgment on liability was entered for the claimant on 26<sup>th</sup> July, 2018. The matter has now come for assessment of damages.

## The Evidence

On 3<sup>rd</sup> November, 2017 the claimant was hit by motor vehicle registration number LL 2366/LL 3997 Freightliner/Trailer being driven by the 1<sup>st</sup> defendant. The motor vehicle was coming from the direction of Muloza heading towards Mulanje along Mulanje-Muloza road. Upon arrival at or near Ruo bridge, the 1<sup>st</sup> defendant lost control of the motor vehicle which then went to the extreme offside of the road where it hit the claimant who was walking along the dirty verge of the road and heading towards the same direction.

As a result of the accident, the claimant suffered damage. She sustained fracture of the left femur and pelvis, bruises on the back, left arm, buttock and left leg. She was given diclofenac intramuscular, and the fracture was reduced and put on skin traction for 6 weeks. As a result of the injuries she sustained, the claimant will be able to do household chores and sporting activities with difficulties.

The claimant is also claiming a sum of K13,500.00 as cost for procuring Police and medical reports. She tendered the Police which shows that she paid a sum of K3,000.00 under GR No. 4721867. She is also claiming costs of the proceedings.

## Applicable Law

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. Where a party has not proved special damages reasonable

compensation in the circumstances can be awarded - *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 her 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 pain. She is still suffering. She sustained fracture of the left femur and pelvis, bruises on the back, left arm, buttock and left leg. The fracture was reduced and put on skin traction for 6 weeks.

### 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.

As a result of the injuries she sustained, the claimant's ability to do household chores and sporting activities has been compromised.

### 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's injuries have reduced her ability to do household chores and sporting activities. She, therefore, has a limitation to do these things that any other person can do without reasonable accommodation.

### Comparable Cases

In *Friday Mtelera v Nenani Misolo and Prime Insurance Company Ltd* Personal Injury Cause No. 530 of 2015 the claimant sustained fracture of the knee joint, fracture of the ankle of the right leg, a cut on the left leg and cut and bruises on the right elbow. The court awarded him a sum of K7,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. In *Laston Sukali v Davie Saizi and 2 Others* Personal Injury Cause No. 18 of 2016 the claimant sustained multiple fractures of metatarsal on the left foot and chest injuries. He was in plaster of Paris for over 6 weeks. He stayed for over a month using the right side only when sleeping. This court awarded him a sum of K4,500,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement on 16<sup>th</sup> January, 2019.


It is clear that the injuries sustained by the claimants in the above-cited cases are comparable to the injuries sustained by the claimant in the present case. I, therefore, award the claimant a sum of K5,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement.

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount she is claiming for obtaining the medical report. If some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the claimant had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just. I, therefore, award the claimant a sum of K3,500.00 as costs for obtaining the medical report. I also award the claimant a sum of K3,000.00 as costs for obtaining the Police report.

### Conclusion

In conclusion, the claimant is awarded total sum of K5,006,500.00. The claimant is also awarded costs of these proceedings.

Pronounced in court this 30<sup>th</sup> April, 2019 at Blantyre.

  
EDNA BODOLE

ASSISTANT REGISTRAR