



**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NO. 716 OF 2018**

**BETWEEN**

**JAMES MACHUPI ..... CLAIMANT**

**AND**

**MOTA ENGIL ENGENHARIA E. CONSTRUCAO AFRICA SA .....DEFENDANT**

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

Domasi, of Counsel for the Claimant

Mtonga, of Counsel for the Defendant

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimant brought proceedings against the defendant claiming damages for pain and suffering, loss of amenities of life, special damages, and costs of the action. Judgment on liability was entered for the claimant on 25<sup>th</sup> February, 2018. The matter has now come for assessment of damages.

**The Evidence**

The claimant was employed by the defendant as a Security Guard. On 22<sup>nd</sup> August, 2018 the claimant was manning the gate as an employee of the defendant. He saw

the dog handler who was an employee of the defendant managing the dog without a muzzle. The claimant was later bitten by the dog on the penis, both buttocks and knees.

The claimant suffered injuries. According to the medical report, the claimant sustained wounds on the penis, both buttocks and knees. He also sustained urethral injury. The treatment he received was wound debridement and application of iodine on the wounds. The wounds healed but has urethral stricture. This is causing problems for passing out urine and having sexual intercourse.

The claimant testified that when the dog bit him, the claimant felt sharp pain and he lost consciousness for about 3 hours. He was taken to the defendant's clinic where he was treated for about two weeks. He was taken to a clinic in Limbe and a clinic in Lilongwe where it was recommended that he should be operated on but the defendant disagreed. All that time, the claimant was still bleeding from the penis's wounds. He was later given antibiotics and the bleeding stopped. However, part of the penis shaft remains swollen. He now struggles to urinate as small drops of urine just passes out. He feels pain when urinating. He is also unable to enjoy sexual intercourse with his wife with whom they have several children together. Inability to have sexual intercourse is so distressing to him and he feels so incomplete. He is afraid of losing his wife.

The claimant is also claiming a sum of K10,500.00 as costs for procuring the medical report.

#### 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 Company 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 Company 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 he 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. He is still suffering and in pain. He sustained wounds on the penis, both buttocks and knees and urethra. He underwent wound debridement. He was bleeding from the penis for over two weeks after being bitten by the dog. He has not been operated on due to the disagreements by the defendant with the medical personnel at the clinics the defendant took him to for treatment. He now struggles to urinate as small drops of urine just passes out and he feels pain when urinating. He is also unable to enjoy sexual intercourse with his wife with whom they have several children together. This has caused him so much distress and he feels incomplete. He is afraid of losing his wife.

### 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 he formerly enjoyed – *Kanyoni v Attorney General* [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

The claimant is unable to enjoy life as he used to. He struggles to pass urine and is unable to have sexual intercourse with his wife. His inability to have sexual intercourse shows that his manhood has been taken away from.

### Award of Damages

In *Paul Mateyu v Muntaz Hamdan and Prime Insurance Company Ltd* Miscellaneous Cause Number 109 of 2016 the claimant sustained pelvic fracture and an injury to the urethra. The injuries made it impossible for him to walk or sit. He could not properly urinate and enjoy sexual intercourse. He was awarded a sum of K3,585,000.00 as damages for pain and suffering, K1,995,000.00 as damages for loss of amenities of life and K1,300,000.00 as damages for disfigurement. The total awarded sum was K6,880,000.00 and the award was made on 30<sup>th</sup> July, 2018.

The injuries sustained by the claimant in the above-mentioned case are comparable to the injuries sustained by the claimant in the present case. Apart from sustaining an injury to the penis and urethra, the claimant in the present case also sustained injuries to the buttocks and knees. I, therefore, award the claimant a sum of K4,000,000.00 as damages for pain and suffering, and K2,000,000.00 as damages for loss of amenities of life.

### Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount he 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 K4,000.00 as costs for obtaining the medical report.

### Conclusion

The claimant is awarded total sum of K6,004,000.00. The claimant is also awarded costs of these proceedings.

Pronounced in court this 14<sup>th</sup> day of October, 2019 at Blantyre.



**EDNA BODOLE (MRS)**

**ASSISTANT REGISTRAR**