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**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 997 OF 2014**

**Between**

**SANDIKONDA MABEDI.....CLAIMANT**

**-and-**

**HURGSON MBINGWANI .....1<sup>ST</sup> DEFENDANT**

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

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**CORAM: Austin Jesse Banda, Assistant Registrar**

Mr. D. Jere, for the Claimant

Mr. Chipembere, for the Defendants

Ms. Madalitso Galafa, Clerk/ Official Interpreter

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Banda, Assistant Registrar

**ORDER ON ASSESSMENT DAMAGES**

**Background**

A consent judgment settled the issue of liability between the two parties. It was endorsed by the court on 23<sup>rd</sup> November, 2017. The consent judgment is in the following terms:

1. Judgment BE and is HEREBY entered against the Defendants for damages for pain and suffering, loss of amenities of life, disfigurement and special damages as pleaded.
2. The said damages be assessed by the court at a date to be fixed, provided that if the said damages as assessed shall exceed K5, 000, 000.00 the 2<sup>nd</sup> defendant shall only be liable to pay K5,000,000.00 being its policy limit with its insured and the remainder shall be paid by the 1<sup>st</sup> defendant.
3. Costs be for the Claimant to be taxed if not agreed.

I heard the parties for the purposes of assessment of damages. There was only one witness, the claimant himself. The defendants did not all any witnesses. Through counsel they cross examined the claimant and asked for time to file written submissions that did not come on lapse of the time given.

### Evidence

Sandikonda Mabedi told the court that he was injured in a road traffic accident at Mulanje PUMA filling station. He said that as a result of the accident he suffered multiple bruises on the right hand, left foot and right leg but also an injury to the right knee joint. He said that he was treated at Mulanje District Hospital where he underwent excessive pain and suffering and iodine dressing of the wounds. He tendered a police report and also a medical report. He prayed to be compensated.

In the medical report, the author, Mr. Danford Nindi, a Senior Clinical Officer stated that the claimant had a 10% degree of permanent incapacity, but that he will be able to perform manual labour and that he would perform his previous job. It was stated that he can do sports, read and perform household chores. It was further stated that there was no need for further examination.

In cross examination, the claimant told the court that he was able to do the roles that he would do before except for the scars that he was left with.

### Issue

The amount of damages that the claimant should be awarded in compensation for the personal injuries he suffered as a result of the negligence that the defendants are liable of.

### Analysis

Damages are the remedy that is open to a victim of a wrongful act of another. With general damages courts do award them not to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of their wrongful act or omission. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable

damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

#### Pain and Suffering

The word pain connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident, while suffering includes fright, fear of future disability, humiliation, embarrassment and sickness- Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8. The award of damages for pain and suffering depends upon the claimant's personal awareness of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174 @ 183**.

#### Disfigurement

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014**. Potani, J, in the case of **Chingamba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007**, stated that disfigurement was not something to be taken lightly and casually as a person lives with the deformity for the rest of his life. In **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J**, it was held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

#### Loss of Amenities of Life

Damages are paid under the head of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life, which amounts to substantial loss, whether the claimant is aware or not of that loss. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**; Kemp and Kemp, The Quantum of damages, Vol .1(2nd Ed)., 1961, p.624.2

### Finding on the Injuries in this Matter

The evidence of the claimant is unchallenged on the type of injuries that he sustained. It is my finding therefore that the injuries the claimant stated as backed by the medical report are the injuries he sustained. I further find that he has been healed completely of the injuries and bruises that he only has been left with scars as the only aftermath of the injuries.

### Comparable Cases

Counsel for the claimant cited the following three cases as comparable cases. The first was the case of **Duncain Mussa V. Judith Chimatiro and Prime Insurance Co Ltd, Personal Injury Cause No. 97 of 2014** where the claimant suffered a painful back, a painful chest, a painful knee and ankle and the court made an award on 18<sup>th</sup> August, 2015, of K2, 400,000.00 for pain and suffering and loss of amenities of life and disfigurement.

The second case cited was that of **Habet Lidaka v. Charles Remoortere and Prime Insurance Co Ltd, Personal Injuries Cause Number 124 of 2015** the claimant was awarded the sum of K2, 300,000.00 as damages for pain and suffering and loss of amenities of life. the award was made on the 16<sup>th</sup> July, 2015. The injuries sustained by the claimant in this case were soft tissue injuries, multiple body wounds, bruises and abrasions and general body pains.

Lastly counsel cited the case of **Watson Sakwiya v. Geoffrey Wazingwa and Prime Insurance Co Ltd Personal Injury Cause No. 1311 of 2015** where the plaintiff suffered deep cut wounds in the palms and also painful legs, the court awarded him K2,000,000.00 on 13<sup>th</sup> October, 2015, as damages for pain and suffering and loss of amenities of life.

In an award made on 20<sup>th</sup> July, 2012, a claimant who suffered a sprained right ankle and had multiple bruises such that she was admitted in hospital for a day was awarded K2,000,000.00 for pain and suffering and loss of amenities of life- see **Patricia Demesani Bannet v. Isaac Lizimba and Another, Civil Cause No. 811 of 2011** (unreported).

### Determination

In all the above comparable cases I find that the injuries though comparable were a bit serious than the injuries in the case at hand. In this case there was not a serious wound just multiple bruises and soft tissue injury on the back of a knee. The Senior Clinical Officer put the degree of permanent incapacity at 10%. I wonder where that comes from given the claimant was completely healed needing no further attention and can perform both manual and any other type of job he was doing before. There is no evidence of any loss in the enjoyment of pleasures he was enjoying before. He has only noticeably been left with scars where there was bruising.

In light of the above comparable cases and facts of this instant case, I make an award of **K1,500,000.00** for pain and suffering, a nominal **K30,000.00** for loss of amenities of life and **K250,000.00** for disfigurement. I also award the sum of **K13, 500.00** as special damages for the police and medical reports.

**Conclusion**

The claimant is hereby awarded a sum of **K1, 793,500.00** as damages for the personal injury that he suffered as a result of the negligence of the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant's insured. The defendants should also pay costs of the assessment hearing.

Made this 14th day of January, 2019.



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**