



REPUBLIC OF MALAWI  
**IN THE HIGH COURT OF MALAWI**  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE 588 of 2018

BETWEEN:

FRIDAY ROBERT.....CLAIMANT

AND

EVANCE BRAZIYO..... 1<sup>ST</sup> DEFENDANT

PRIME INSURANCE CO. LTD.....2<sup>ND</sup> DEFENDANT

CORAM

Mrs T. Soko : Assistant Registrar

Mr Domasi : Counsel for the claimant

N. Munthali : Court Clerk

**ASSESSMENT ORDER**

**BACKGROUND**

The claimant took an action against the defendants claiming damages for pain and suffering, disfigurement, loss of amenities of life, loss of earnings and costs of the proceedings. Facts taken out from the statement of claim avow that on 29<sup>th</sup> July 2017, the 1<sup>st</sup> defendant was driving a motor vehicle registration number BT Toyota Hiace Quantum minibus insured by the 2<sup>nd</sup> defendant from the direction of Chadzunda heading

towards Blantyre along Blantyre/Chikwawa road. Upon arrival at Mkwapatira village, he hit the claimant who was a pedestrian at that particular time. As a result of the accident, the claimant sustained injuries.

## **EVIDENCE**

The claimant appeared as the sole witness. He adopted his witness statement in its entirety. He stated in the statement that he sustained open fracture of the right lower leg, general body pains, bruises on both arms and legs and soft tissue injuries. He said soon after the accident he felt excruciating pain and he cried. He was treated at Queen Elizabeth Central Hospital where he was admitted from 29<sup>th</sup> July 2017 to 4<sup>th</sup> August 2017. He said during the first three weeks, his leg was tied with stones as part of treatment and it was hard to turn the leg to the other side as the stones were heavy. He added that he could not walk as a result he was answering the call of nature whilst on hospital bed in the presence of guardians and other patients which was embarrassing. He stated that at night he could not sleep as the pain was intense. He said during the cold weather he still experiences pain. He said following the accident, he was unable to do his business as he was not able to walk or stand for a long time. He said he used to earn k60, 000.00 every month. He also said that during his free time he used to walk around the village seeing new developments and visiting old friends but due to the injuries that he sustained, he is failing to do so. He said the wounds that he sustained were sutured and afterwards a plaster of Paris was applied on the leg. Further he used to walk with clutches for two months. He said he was in pain and it took three months for the pain to subside. He said in oral evidence that he used to make K100, 000.00 per months and that now he is unable to make such amount and cannot send his children to school. Lastly, he stated that the claimant healed with scars (big scar of the leg).

## **SUBMISSIONS**

In submissions, Counsel for the claimant submitted that the claimant must be awarded a sum of K3,000,000.00 as damages for pain and suffering, K2,000,000.00 as damages for loss of amenities of life, K2,000,000.00 as damages for disfigurement and K13,500.00 as special damages for cost of police report.

In support of the claims Counsel cited the following comparable decisions

### **Virginia Makiyi vs Tawina Chathula and Reunion Insurance Co Ltd Personal Injury No. 392 of 2015**

where the claimant suffered a fracture of the left tibia and fibula, multiple bruises on the chest. His permanent incapacity was assessed at 30%. The court awarded the claimant a sum of K5, 000,000.00 as damages.

**Gedion Mhango vs Nico General Insurance Co Ltd Personal Injury Cause No. 703 of 2016(unreported)**

where the claimant suffered a fracture on his right leg, serious cuts on the head, and cuts on the right hand side of the body and backside. He was admitted from the 15<sup>th</sup> January 2016 to 13<sup>th</sup> April 2016. A metal rod was inserted in the leg. The court awarded the total sum of K6, 700,000.00 on 31<sup>st</sup> January 2017.

**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. 329 of 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 neighbouring 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.

### **SPECIAL DAMAGES**

The rule is well settled that special damages have to be specifically pleaded and strictly proved. See Phiri V Daudi 15 MLR 404. This means the plaintiff must produce evidence to prove the amount of special damages.

### **DETERMINATION**

In the present matter, I have looked at the evidence and it is clear from the evidence that the claimant underwent unbearable pain and suffering. However, the medical report shows that the claimant only sustained a fracture of tibia fibula on the right leg. The report does not state anything to do with bruises on the arms and legs. When the claimant showed the court the injuries he sustained, he showed the court a scar on the leg. The injuries have affected the claimant to the effect that he walks with difficulties and cannot walk long distances. I have considered the decisions cited by Counsel herein. I have noted that in Makiyi and Mhango case the claimant sustained multiple injuries unlike in this case. I have also considered the devaluation of currency and inflation. I therefore award a sum of K3, 000,000.00 as damages for pain and suffering and disfigurement K800, 000.00 as damages for loss of amenities of life. There is no substantial evidence to prove that the claimant used to earn either K60, 000.00 or K100, 000.00. I therefore award K75, 000.00 on the head of loss of earnings. The claimant did not prove special damages therefore the court will not award the same. I therefore make a total award of K3, 875,000.00 in all heads of damages.

*Costs in the damages  
made on his 1st day of July 2019*



**T. SOKO**

**ASSISTANT REGISTRAR**