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**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 662 OF 2017**

**BETWEEN**

**ALIA MATAKA [Suing as mother and litigation guardian of  
HENRY GONANI (Minor)] ..... CLAIMANT**

**AND**

**KILLIE ISSAH ..... 1<sup>ST</sup> DEFENDANT  
PRIME INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

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

Kusiwa, of Counsel for the Claimant

Stenala, of Counsel for the Defendants

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimant through her mother and litigation guardian brought proceedings against the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement, and costs of the action. Judgment on liability was entered for the

claimant on 28<sup>th</sup> November, 2018. The matter has now come for assessment of damages.

### The Evidence

The claimant is a minor. She is aged 10 years. On 6<sup>th</sup> September, 2017 the 1<sup>st</sup> defendant was driving motor vehicle registration number MJ 4081 insured by the 2<sup>nd</sup> defendant. He was driving the motor vehicle around Jumbe Trading Centre off the Limbe-Machinjiri road. Whilst reversing the motor vehicle, he hit the claimant who was standing within the same area.

As a result of the accident, the claimant sustained injuries. She sustained fractured talus of the left ankle. She was on plaster of Paris for 4 weeks. She has now healed from her injuries.

### 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.

### 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.

### 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.

### Analysis

It is clear from the evidence that the claimant was in great pain and suffered a lot. She sustained fractured talus of the left ankle and was on plaster of Paris for 4 weeks. However, the claimant has healed from her injuries.

No evidence was adduced to show that the claimant is incapable of performing some activities she used to do. Also no evidence was adduced to show that the claimant has been disfigured. No damages for loss of amenities of life and disfigurement are, therefore, payable.

### Award of Damages

In *Samuel Selengu v Masautso Levison and 2 Others* Personal Injury Cause No. 560 of 2017 the claimant sustained fracture subluxation of the left big toe. He had

healed from his injuries. He was awarded a sum of K2,500,000.00 as damages for pain and suffering on 15<sup>th</sup> July, 2019.

The injuries sustained by the claimant in the above mentioned case are similar to the injuries sustained by the claimant in the present case. This court, therefore, awards the claimant a sum of K2,500,000.00 as damages for pain and suffering.

Conclusion

The claimant is hereby awarded a total sum of K2,500,000.00. The claimant is also awarded costs of this action.

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



**EDNA BODOLE (MRS)**

**ASSISTANT REGISTRAR**