



The Judiciary

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**



**PERSONAL INJURY CAUSE NUMBER 570 OF 2016**

**Between**

**CHRISSY TOMASI ..... CLAIMANT**

**-and-**

**CHIMBALANGA .....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. Kusiwa, for the Claimant

Mr. Chisale, for the Defendants

Ms. Galafa, Clerk/ Official Interpreter

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Banda

**ORDER ON ASSESSMENT DAMAGES**

**Background**

By the judgment of the Honourable Justice Madise, pronounced on 19<sup>th</sup> September, 2017, the claimant was awarded damages for pain and suffering, loss of amenities of life and a refund for medical expenses, expenses lost in obtaining a police report and the loss of charcoal, and cost of the action. The damages arose from the fact that the claimant was injured when she fell down from a motor vehicle that she was travelling in, that was driven by the 1<sup>st</sup> defendant and insured by the 2<sup>nd</sup> defendant. It happened that the offside gate of the motor vehicle suddenly opened and the claimant and other passengers were thrown down the vehicle. In fact, one person died from this incident. The driver was found to be at fault for loading goods and passengers in the motor vehicle without securing them properly. The matter came before me for hearing for the purposes of assessment of damages on 28<sup>th</sup> January, 2019.

## Evidence

The claimant was the only witness in the assessment hearing. She told the court that from the accident she sustained an open left bimalleolar fracture (left ankle open fracture) which had a big open wound on the lateral aspect exposing bony fragments. She was taken to the theatre at Dedza District Hospital for debridement and manipulation under anaesthesia. She stayed in the hospital for two weeks and was told that she had to have the wound healed first before being put in a Plaster of Paris (POP). The POP was put at Queen Elizabeth Central Hospital (QUECH) in Blantyre after she had asked for a transfer. She stayed in the POP for six weeks but used crutches to walk for 3 months, where she used to visit QUECH for medical reviews.

It was the evidence of Chrissy Tomasi that she still has difficulties with the left leg. She feels numbness in the leg. She cannot walk a long distance without feeling pain in the leg. The leg is now shorter than before and she walks with a limp and she has difficulties carrying goods that she used to carry on her head. She said that she was in the business of selling charcoal and she lost all her 15 bags of charcoal on the day.

The claimant prayed for damages for personal injuries and a refund for the lost charcoal as well as special damages being expenses incurred in obtaining a medical report and a police report.

In cross examination, the claimant told the court that the only wound she had was on the open fracture. She said she was being treated as an outpatient at QUECH but she had been going there for a period of two months before she was finally discharged. She also said that there were people who witnessed the accident and saw that she had 15 bags of charcoal but that these were not called to court. She further said that she had difficulties farming as her household farm land is far from her home and she has problems to run a business even though she is able to carry out household chores.

## Issue

The only issue in this case is the amount of damages that the defendants should pay in compensation to the claimant for her injury and loss.

## Analysis

Courts do award damages as a remedy to make good that which was wrong to a victim of the wrong by another person. Damages are not ordered to punish the defendant but to fully compensate the claimant of all the losses he has suffered. 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 [now called the Claimant], 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*.

#### 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 Extent of Injuries

I have no doubt in the evidence of the claimant that she sustained an open fracture of the left ankle which had a big open wound on the lateral aspect exposing bony fragments which necessitated a Plaster of Paris for six weeks. And for this injury she stayed in the hospital for two weeks and also was an out-patient for weeks on end. It is believed too that the claimant has difficulty taking a long walk or supporting heavy items on her head since the fracture on her leg and that she limps and experiences pain when she walks.

I also have no reason to doubt that she lost 15 bags of charcoal in the accident. Even though the claimant did not call any witnesses to prove this claim, the police report of the accident documented that the vehicle in question carried bags of charcoal. It appears to me more

probable than not that the claimant had 15 bags of charcoal which probably due to her injuries after the accident she could not care for or trace, herself needing care and assistance of Samaritans.

#### Comparable Cases

In **Zuze Bonjesi v. Prime Insurance Co. Ltd, High Court, Principal Registry, Civil Cause No. 488 of 2011**, the plaintiff suffered a fracture of the left tibia, a big wound exposing the bone and tendons and a deep wound on the right leg. She was awarded the sum of K7, 000, 000.00 for pain and suffering. This award was made on 17<sup>th</sup> July 2012.

In the case of **Gedion Mhango v. Nico General Insurance, Personal Injury Cause No. 703 of 2016, High Court, Principal Registry (unreported)** the plaintiff suffered a fracture on his right leg, serious cuts on the head, and cuts on the right-hand side of the body and on the backside. That he was further admitted from the 15th January, 2016 to 13th April, 2016. A metal rod was inserted in the leg. In an award made on 31<sup>st</sup> January, 2017, K 5, 000,000.00 was ordered as compensation for pain and suffering.

In an award made on 19<sup>th</sup> May, 2016, in **Enelesi Kaponda v. Emmanuel Chimanya and Prime Insurance Company Limited, Personal Injury Cause No. 187 of 2015**, the claimant who sustained a fracture of the lateral malleolus on the right ankle was awarded K3,000,000.00.

In the case of **Steve Nansongole v Unitrans Malawi Limited and Prime Insurance Company Limited**, Civil Cause No 898 of 2010, (unreported) the Plaintiff suffered fracture of right humerus, deep cuts on the left leg and had wounds sutured and Plaster of Paris applied twice and could not rotate his head nor extend his arm with a permanent degree of incapacity pegged at 16% was awarded K3, 000,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 20<sup>th</sup> February 2017.

#### Determination

Looking at the seriousness of the injury, and in light of comparable awards and the time that has elapsed since those awards, I find the sum of **K3,500,000.00** to be adequate compensation. I further award the claimant the sum of **K1,000,000.00** as compensation for loss of amenities of life as pleaded. I have looked at the pleadings though and I find that the claimant never pleaded for damages for lost bags of charcoal and special damages for the procurement of a police but also medical expenses. However, I feel compelled to award the same as the Honourable Judge did award them on page 7 of his judgment and this assessment is premised on that judgment.

I therefore award the sum of **K 75,000.00** which was the value of the lost 15 bags of charcoal. I award the claimant **K3,000.00** cost of obtaining the police report under General Receipt number 1012576. There was no evidence either in the assessment hearing and bundle or on file showing the amount of money suffered as medical expenses. I assess the same at zero.

**Conclusion**

The claimant is awarded a total of **K4, 578,000.00** as damages for her injuries and subsequent loss. The defendants have to pay costs of the assessment also.

Made this 6<sup>th</sup> day of March, 2019.



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**