



The Judiciary

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 306 OF 2018**

**Between**

**MADALITSO NYAMBO..... CLAIMANT**

**-and-**

**PRIME INSURANCE COMPANY LIMITED ..... DEFENDANT**

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

Mr. Kalua, for the Claimant

Mr. Chipembere and Ms. Manjandimo, for the Defendants

Ms. Doreen Nkangala, Clerk/ Official Interpreter

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Banda, Assistant Registrar

**ORDER ON ASSESSMENT DAMAGES**

**Background**

The claimant herein commenced this proceeding against the defendant who is the insurer of the motor vehicle that run over the claimant's left foot and caused him injuries. The claimant therefore sued for damages for pain and suffering, special damages for medical and police report, costs of the proceedings. The honourable Justice Jack N'riva delivered his judgment of 8<sup>th</sup> November, 2018 in favour of the claimant and ordered that assessment of damages be before the Registrar. I heard the parties on 20<sup>th</sup> December, 2018 for the purposes of assessment.

**Evidence**

The only witness in the assessment hearing, Madalitso Nyambo the claimant, told the court that he was run over by a motor vehicle, a Mazda Esse, registration number ZA 3162 at Kameza

Petroda Junction near Mkango Lodge whilst walking on the dirty verge as the driver failed to maintain his nearside lane. He said that as a result of the accident he suffered a fracture of the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> metatarsal of the left foot and soft tissue injury. He said that he was taken to Mlambe Hospital by the driver of the vehicle where he was treated. However, he said, after two days his left foot was heavily swollen and that forced him to go to Queen Elizabeth Central Hospital for further treatment where his foot was cast in plaster of paris, which was removed after a month and 10 days.

The claimant said that at the time of making his witness statement the injuries had healed but that he still experienced pain in the foot when walking. He tendered two medical documents, one a report and the other a copy of his health passport book from Queen Elizabeth Central Hospital and a police report. He also showed the court an x-ray photograph of the affected foot.

The defendant did not cross examine the claimant and did not call any witnesses of their own. They simply submitted on the rightful quantum.

### **Issue**

The only issue for determination at this stage of the proceeding is the amount of damages that must be paid to the claimant as compensation for the injuries he sustained as a result of the negligence of the defendant's insured.

### **Analysis of Fact, Law and Determination**

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, 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).**

In this case the claimant submitted that he should be compensated for pain and suffering and loss of amenities of life. However, I took note that the head of loss of amenities of life was never pleaded in the statement of case and as such it cannot hold at this stage of the proceeding.

#### 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.**

#### Comparable Cases

In **Selemani Paul vs. Holles Magombo and Prime Insurance Company Limited Personal Injury Cause Number 762 of 2015 (unreported)** where the claimant suffered a fracture of the 5<sup>th</sup> base metatarsal, multiple bruises on the head and chest and multiple cuts on the lower extremity, the court awarded the claimant a sum of K 2, 500,000.00 as damages for pain and suffering in an award made on 2<sup>nd</sup> February, 2016.

In **Texten Kamfoloma v. Jimmy Kaduka and Prime Insurance Limited Personal Injury Case Number 811 of 2012 (unreported)** a claimant who had a fracture of the metacarpal and the deep wound on the figure was given an award of K785,000.00 for pain and suffering, on 12<sup>th</sup> July, 2018.

In the case of **Chifundo Lajabu v. Eklezio Kasitomu and Charter Insurance Co Limited, Personal Injury Cause No. 855 of 2014 (unreported)**, a claimant who sustained an open

fracture of the first metatarsal, a deep cut wound under his foot, multiple bruises on the right leg, and a major sprain on top of the leg was awarded a sum of K1,400,000.00 for both pain and suffering and loss of amenities of life, on 20<sup>th</sup> June, 2018.

### Determination

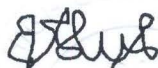
It is my finding that in this instant case the injuries are less serious than in the Selemani Paul case. While in the Selemani Paul case there was only a fracture of the 5th metatarsal whilst in this case there are fractures to 3 metatarsals, there were other injuries in the Selemani Paul case such as multiple bruises to the head and other parts of the body. The award was made more than 2 years ago though. The injuries in the instant matter are however, somewhat more serious than those in the Texten Kamfoloma case given the number of fractures. The Chifundo Lajabu case is more comparable to this case at hand but still on the lower scale in terms of fractures and the suffrage they must have caused to the two individual claimants.

In light of the above cases and facts of this instant case, and consideration of passage of time since the comparable awards were made, about 6 months for two last comparable cases, I award the claimant the sum of **K1, 750,000.00** as damages for pain and suffering. I award the claimant **K3,000.00** special damages for the procurement of a police report. There is nothing to prove the expense of the medical report, and I make no award on that.

### Conclusion

The claimant is hereby awarded a total sum of **K1, 753,000.00** as damages for the personal injury that he suffered as a result of the negligence of the defendant's insured. The defendant should also pay costs of the assessment hearing.

Made this 8<sup>th</sup> day of January, 2019.



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**