



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
Civil Cause Number 937 of 2013**

BETWEEN:

MWAJUMA MTAMBO.....1st CLAIMANT
BOND MTAMBO (a minor suing through
MRS MWAJUMA MTAMBO his mother and next friend).....2nd CLAIMANT
AND
CHIYEMBEKEZA CHEKANI.....1ST DEFENDANT
APEX CAR RENT.....2ND DEFENDANT
CHARTER INSURANCE COMPANY LIMITED.....3RD DEFENDANT

CORAM:	CM MANDALA:	ASSISTANT REGISTRAR
	Dzimphonje:	Counsel for Claimant of Winlaw & Nda
	1 st Defendant:	Absent (Unrepresented)
	2 nd Defendant:	Counsel for 2 nd Defendant of Nicholls & Brookes
	3 rd Defendant:	Counsel Kandeya of Liberty General Insurance
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to judgment pronounced by the Honorable Judge on 3rd April 2019. The Judge found the Defendants liable after their defence was struck out for non-attendance as per Order 16 rule 7(1) (c) of the Courts (High Court) (Civil Procedure) Rules of 2017.

This matter arose from a road accident that occurred on 6th July 2013 when the 1st Defendant was driving along the Lilongwe-Dedza road and collided with another motor vehicle. The Claimants sustained injuries as a result of this collision.

EVIDENCE

Claimant's Evidence

The 1st Claimant adopted her witness statement as evidence in chief. The witness statement states:

- 1. I am the 1st Claimant in this matter. I am also a mother and next friend of the 2nd Claimant Bond Mtambo who is a minor, aged (3 months) at the time of the accident.*
- 2. On or around 6th July 2013, a road accident occurred at or near Nathenje trading Centre along Lilongwe/Dedza road in Lilongwe, when the 1st Defendant with speed, so negligently controlled or drove or managed his motor vehicle registration number SA 4962 Toyota Hilux double cabin and collided with the minibus we were travelling in. Due to the accident my son and I sustained injuries. Attached is a copy of the Police Report marked and exhibited as "MM 1".*
- 3. The road accident occurred due to the negligence of the 1st Defendant.*

4. *As a result of the accident my son and I sustained injuries. I sustained injuries including a deep cut wound, swollen forehead, head injuries, mild shaft contusion and general body pains. My son also sustained injuries including swollen tender right arm and soft tissue injuries. We were referred to Kamuzu Central Hospital for medical attention of which I underwent surgery and was sutured. Attached is a copy of the Medical Reports marked and exhibited as “MM 2”.*
5. *My son was treated but it took a long time for him to heal.*
6. *Since then we have not been compensated by the Defendants despite being responsible for the accident.*
7. *I verily believe in the statement made to the best of my knowledge and belief.*

The 1st Claimant’s viva voce evidence was that her and her son were involved in a motor vehicle accident on 6th July 2013. The 1st Claimant sustained deep cuts on her leg, hand and head. Her son, the 2nd Claimant, was also injured on the head and arm. Since then, the 1st Claimant has trouble walking long distance. She tends to forget things easily due to the head injury. Additionally, her son often complains that he has a headache.

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimants filed written submissions in support of the application. Counsel avers that the extremity of the Claimants’ injuries and the devaluation of the Kwacha would attract awards of K4,500,000.00 for the 1st Claimant and K5,000,000.00 for the 2nd Claimant as compensation. Counsel for the Claimant cited the following comparable awards in support:

- ***Habet Lidaka v Charles van Remootre and Prime Insurance Company Limited*** – Personal Injury Cause Number 124 of 2015 where the Claimant sustained soft tissue injuries, multiple body wounds, bruises and general body pains. On 16th July 2015 the Claimant was awarded K2,300,000.00 for pain and suffering, loss of amenities of life and disfigurement.
- ***Yusufu Brighton v Prime Insurance Company Limited*** – Civil Cause Number 921 of 2013 where the Claimant sustained a big cut on the right hands and a painful shoulder. On 11th January 2016, the Claimant was awarded K2,400,000.00 for pain and suffering, loss of amenities of life and disfigurement.
- ***Dancan Mussa v Judith Chimaliro and Prime Insurance Company Limited*** – Civil Cause Number 97 of 2014 where the Claimant sustained a painful back, painful chest, painful left knee and left ankle. On 18th August 2015, the Claimant was awarded K2,400,000.00 for pain and suffering, and loss of amenities of life.

ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant’s pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.¹

¹ See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd*³ by stating: ‘*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*’

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*⁴, the Supreme Court states: “*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*” In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁵ the Court states: “*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*” In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.*’

COMPENSATION

The 1st Claimant sustained a deep cut wound on the right knee, painful swollen forehead, head injuries, mild shaft contusion, and general body pains. The 2nd Claimant sustained a swollen tender right arm and soft tissue injuries.

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. See: *Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents* (Butterworths, 1985) 8 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA).

The 1st Claimant’s medical report states that she sustained ‘swollen forehead in head injury, and deep bleeding laceration on right knee, and left leg mild shaft contusion with skin colour changes. The 1st Claimant underwent surgical treatment, namely ‘surgical wounds debridement and suturing under local anesthetic.’ And was also treated through ‘wound suturing, regular dressing change, and analgesic....’ The 1st Claimant clearly underwent a lot of pain and from her evidence, had to be treated at two different

² *British Commission v Gourley* (1956) AC 185.

³ *West v Shepherd* (1964) AC 326 at 346.

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi MSCA* 12 of 1993.

facilities, one hospital did the immediate post-accident care, while another health facility did the longer-term care such as removal of sutures. Based on this, this court awards the 1st Claimant the sum of K2,000,000.00 as damaged for pain and suffering.

The 2nd Claimants medical report states that he sustained a painful swollen tender right arm with soft tissue injuries and was crying uncontrollably. A splintage and rest with collar and calf sling was applied to the 2nd Claimant. The 2nd Claimant had residual intermittent pain and recurrent crying when the arm is touched. It should be noted that the 2nd Claimant was a three-month-old baby when he was involved in the accident. It was impossible for him to explain how he felt or to identify the injuries he sustained. Based on this, the court awards the 2nd Claimant the sum of K2,500,000.00 as damages for pain and suffering.

Loss of Amenities of Life

The expression ‘loss of amenities of life’ simply means loss of faculties of pleasures of life resulting from one’s injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: ***Poh Choo v Camden and Islington Area Health Authority*** [1979] 2 All ER 910 and ***City of Blantyre v Sagawa*** [1993] 16(1) MLR 67 (SCA) at 72.

As a result of the accident, the 1st Claimant has trouble walking long distance and tends to forget things easily. As per her medical report, there is a possibility that she might develop right knee post traumatic osteoarthritis. Based on this, this court awards the sum of K750,000.00 as damages for loss of amenities of life.

For the 2nd Claimant, he often complains of headaches that his mother attributes to the injuries sustained in this accident. It would be very difficult to know what effect the injuries had on him as the accident happened when he was very young. On the other hand, it could also be argued, that the effects are ones that he will have to live with for a very long time, especially taking into mind that he was a baby when the accident happened. Based on this, this court awards the sum of K1,000,000.00 as damages for loss of amenities of life.

Special Damages

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - ***Stros Bucks Aktie Bolag v Hutchinson*** (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - ***Govati v Manica Freight Services (Mal) Limited*** [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – ***Wood Industries Corporation Ltd v Malawi Railways Ltd*** [1991] 14 MLR 516.

The Claimant herein claimed the amount of K9,000.00 being cost of police report and cost of medical report as special loss. No evidence was provided to the court to prove that this sum was paid and what it was paid for. As stated, special damages ought to be specifically pleaded and proved. The Claimants

pleaded them but failed to meet the threshold of proof. For these reasons, no amount is awarded under this head.

DISPOSAL

The 1st Claimant is therefore awarded K2,000,000.00 for pain and suffering; K750,000.00 for loss of amenities of life; K0 as special damages and costs of the action (to be taxed by the court). A total of K2,750,000.00 (two million, seven hundred and fifty thousand kwacha).

The 2nd Claimant is therefore awarded K2,500,000.00 for pain and suffering; K1,000,000.00 for loss of amenities of life; K0 as special damages and costs of the action (to be taxed by the court). A total of K32,500,000.00 (three million, five hundred thousand kwacha).

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 16th day of October 2020 at the High Court, Lilongwe.



C Mandala

ASSISTANT REGISTRAR