



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
Civil Cause Number 634 of 2019

BETWEEN:
FORTUNE CHAZIZIRA (suing through
CHIMWEMWE CHAZIZIRA, litigation guardian).....1st CLAIMANT
GANIZANI MANDA.....2nd CLAIMANT
AND
CHISOMO LIMULA.....1ST DEFENDANT
PRIME INSURANCE COMPANY LIMITED.....2ND DEFENDANT

CORAM:	CM MANDALA:	ASSISTANT REGISTRAR
	Kambalame:	Counsel for Claimant of Silungwe Law Consultants
	Kapinda:	Counsel for Defendants of Wilkinson and Associates
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to default judgment granted by the Honorable Judge on 25 November 2019. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, the sum of MK6,000.00 being the cost of medical and police reports and costs of the action. The hearing on Assessment of Damages was conducted on 11th February 2020.

This matter arose from a road accident that occurred on 26th September 2018 when the 1st Defendant was driving along the Area 24/Ngwenya road. The 1st Defendant reversed negligently and hit the Claimants who were walking on the far dirt verge of the road.

EVIDENCE

1st Claimant's Evidence

The 1st Claimants litigation guardian adopted his witness statement as the 1st Claimant's evidence in chief. It states:

1. I am Chimwemwe Chazizira of Maunga village, Traditional Authority Njolomole in Ntcheu district. I am the Claimant's father and his litigation guardian in this action.
2. On or around 26th September 2018 around 12:00 hours Fortune was coming from school with Ganizani Manda, he had just alighted from a minibus when another minibus reversed and hit him while he was standing at the bus stage waiting to board a bicycle taxi at ZBS along area 24/Ngwenya road.
3. For further details of the accident, I produce a copy of the police report that I obtained and mark it "CC 1."
4. He had suffered fracture of the right tibia and fibula, degloving wound on right leg and hip deformity of the limp and unable to walk properly.
5. He was taken to Kamuzu Central Hospital where he was admitted from the 26th September 2018 and was discharged on the 11th October 2018. Thereafter he was treated as an outpatient for two weeks.
6. He has scars on the affected parts.

7. *His permanent incapacity was assessed at 25%.*
8. *He still feels pain on his right leg.*
9. *He usually talks about the accident.*
10. *He missed the better part of his 1st term of school because of the injuries.*
11. *He only allows me and his mother to take him to school and no one else.*
12. *For further details of the injuries, I produce a copy of the medical report and mark it "CC 2."*

In cross examination, the 1st Claimant's litigation guardian told the Court that the 1st Claimant's leg is deformed and is twisted which prevents him from running and playing football. The 1st Claimant was treated at Kamuzu Central Hospital where he was admitted from 16 September to 11 October 2018. The 1st Claimant has recovered but still complains about pain which requires painkillers. The 1st Claimant sustained a deep wound just above the hip bone. He broke his leg. The court observes visible scarring on various parts of the hip. The hospital had to graft skin from the thigh to fill the wound around the ankle.

2nd Claimant's Evidence

The 2nd Claimant adopted his witness statement as their evidence in chief. It states:

1. *I am Ganizani Manda of Nyombe village, Traditional Authority Chakhaza in Dedza district.*
2. *On or around 26th September 2018 around 12:00 hours, I alighted from a minibus at ZBS stage with Fortune Chazizira, suddenly another minibus reversed and hit us while we were standing at the bus stage waiting to take a bicycle taxi at ZBS along area 24/Ngwenya road.*
3. *For further details of the accident, I produce a copy of the police report that I obtained and mark it "GM 1."*
4. *I suffered soft tissue injuries on my back and painful left leg.*
5. *I was taken to Kamuzu Central Hospital where I was treated.*
6. *I only sleep using the right side.*
7. *I still feel back pain up to date.*
8. *My permanent incapacity was assessed at 5%.*
9. *I was working as a house boy. I was earning MK 10,000.00 per month.*
10. *I stopped working for two months due to the injuries.*
11. *For further details of the injuries, I produce a copy of the medical report and mark it "GM 2."*

In cross examination, the 2nd Claimant told the court that he sustained injuries on his left ribs, sprained left foot and swollen toes. The 2nd Claimant was treated at the hospital, he received medication but still feels pain when he sleeps on his left side. The 2nd Claimant had to stop working as a houseboy for two months due to the injuries.

SUBMISSIONS BY COUNSEL FOR THE CLAIMANTS

Counsel for the Claimant 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 a global award of K10,000,000.00 for the 1st Claimant and K4,500,000.00 for the 2nd Claimant as compensation. Counsel for the Claimant cited the following comparable awards in support:

- ***Tryson Gondwe v Donald Gondwe and another*** – Civil Cause Number 765 of 2018 where the Claimant sustained an open fracture of the tibia, cut wound on upper eye and abrasions. The Claimant was hospitalised, had his leg cast in a Plaster of Paris and walks with the aid of clutches. On 2nd July 2019 the Claimant was awarded K7,203,000.00 for pain and suffering, loss of amenities of life, disfigurement, and loss of earning capacity.
- ***Joseph Nseula v Prime Insurance Co Ltd*** – Civil Cause Number 991 of 2018 where the Claimant sustained a fracture of the tibia and fibula with a degloving wound. The Claimant was hospitalised for 3 weeks. On 27th August 2019 the Claimant was awarded K6,307,296.00 for pain and suffering, loss of amenities of life and disfigurement.

- ***Hadija Yusufu v Kondwani Tembo and others*** – Civil Cause Number 205 of 2017 where the Claimant sustained an open fracture on the right leg, deep cut wounds on both feet, scars on both legs and deformity of the right leg. The Claimant was hospitalised for 62 days, she was in a POP for 3 months and walks with a limp. On 22nd November 2018, the Claimant was awarded K6,524,000.00 for pain and suffering and loss of amenities of life; and disfigurement.
- ***Thom Alfred v General Alliance Insurance*** – Personal Injury Cause Number 656 of 2018 where the Claimant suffered a fracture of the right leg and arm and could not walk long distances. On 20th August 2019 the Claimant was awarded K5, 153, 000.00 for pain and suffering, loss of amenities of life and disfigurement.
- ***Moses Waya v Junior Said Mpalume and another*** – Personal Injury Cause Number 620 of 2018 where the Claimant sustained a fracture of the tibia plateau and dislocation of right wrist. The Claimant was hospitalised for 3 months and could not run his business which required him to travel a lot. On 10th September 2019 the Claimant was awarded K7,700,000.00 for pain and suffering, loss of amenities of life, and disfigurement.
- ***Andrew v Prime Insurance Co Ltd*** – Personal Injury Cause Number 479 of 2012 where the claimant sustained soft tissue injuries, multiple bruises and abrasions. On 2nd June 2014, the Claimant was awarded K1,000,000.00 for pain and suffering, loss of amenities of life, and disfigurement.
- ***Mame v. Premier Bus Services*** – Personal Injury Cause Number 210 of 2014 where the Claimant sustained a painful neck with difficulties in turning, painful swollen ankle, painful knee joint, general body pains and 10% permanent incapacity. On 6th October 2014, the Claimant was awarded K2,000,000.00 for pain and suffering, loss of amenities of life and disfigurement.

Counsel for the Claimant made submissions on damages for loss of earnings and earning capacity. This head was neither included in the pleadings nor was it awarded in the default judgment. This court did not consider this submission.

SUBMISSIONS BY COUNSEL FOR THE DEFENDANTS

Counsel for the Defendant 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 a global award of K1,800,000.00 for the 1st Claimant and K400,000.00 for the 2nd Claimant as compensation. Counsel for the Defendants cited the following comparable awards in support:

- ***Edwin Jackson v General Alliance Insurance Company Limited*** – Personal Injury Cause Number 900 of 2014 where the Claimant sustained a fracture of the right leg. On 25th January 2016 the Claimant was awarded K1,000,000.00 for pain and suffering, and K400,000.00 for loss of amenities of life.
- ***Estery Thomas (minor suing through her sister ad next friend Alinafe Bakali) and Isaac Joseph v Prime Insurance Co Ltd*** – Personal Injury Cause Number 152 of 2017 where the 2nd Claimant sustained soft tissue injuries, general body pains and fracture of the femur. On 4th September 2018 the 2nd Claimant was awarded K1,800,000.00 for pain and suffering, loss of amenities of life and disfigurement.
- ***Reuben Haswel Chanza v Jones Somanje and Prime Insurance*** – Civil Cause Number 122 of 2017 where the Claimant sustained an open fracture of the tibia and fibula on the right leg, a deep cut wound on the right leg, a deep cut wound on the right thigh, degloving wound on the left leg, chest pains and bilateral injury. On 18th May 2018, the Claimant was awarded K1,500,000.00 for pain and suffering and loss of amenities of life; and disfigurement.
- ***Madalitso Mambo v Prime Insurance*** – Personal Injury Cause Number 306 of 2018 where the Claimant sustained a fracture of the 2nd, 3rd, and 4th metatarsal of the left foot and soft tissue injury. On

8th January 2019 the Claimant was awarded K1,753,000.00 for pain and suffering, loss of amenities of life and disfigurement.

- ***Aubrey Solomon et al v Reunion Insurance Co Ltd*** – Personal Injury Cause Number 736 of 2015 where the 5th Claimant sustained painful legs, head, neck, back and multiple bruises on both legs, head, neck and back. On 10th January 2018 the Claimant was awarded K350,000.00 for pain and suffering, loss of amenities of life, and disfigurement.
- ***Enelesi Mbiro et al v Ali Mbwana & Prime Insurance Co Ltd*** – Personal Injury Cause Number 404 of 2015 where the Claimant sustained a painful left ankle, bruises on lower extremities, soft tissue injury and sprained left ankle. On 21st November 2017 the Claimant was awarded K205,000.00 for pain and suffering, loss of amenities of life, and disfigurement.

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

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.*'

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).

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.

inclusive of scars and a limp. Based on this, the 1st Claimant is hereby awarded K1,500,000.00 as damages for disfigurement.

The 2nd Claimant has pain on his left side when he sleeps. Based on this, the 2nd Claimant is hereby awarded K500,000.00 as damages for disfigurement.

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 was awarded damages the sum of MK12,000.00 as special damages. There is no indication on file of what the K12, 000.00 covered nor are there receipts prove whether and how the money was spent. Special damages ought to be specifically claimed and proved and the Claimant herein failed to do either. For these reasons, no award will be made under this head.

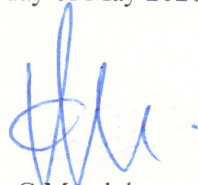
DISPOSAL

The 1st Claimant is therefore awarded K2,500,000.00 for pain and suffering; K1,000,000.00 for loss of amenities of life; K1,500,000.00 for disfigurement and; K0 as special damages and costs of the action (to be taxed by the court). A total of K5,000,000.00 (five million kwacha).

The 2nd Claimant is therefore awarded K1,000,000.00 for pain and suffering; K500,000.00 for loss of amenities of life; K500,000.00 for disfigurement and; K0 as special damages and costs of the action (to be taxed by the court). A total of K2,000,000.00 (two million kwacha).

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

Ordered in Chambers on the 29th day of May 2020 at the High Court, Lilongwe.



C Mandala

ASSISTANT REGISTRAR

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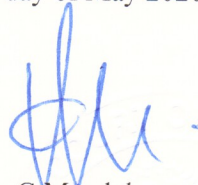
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The 2nd Claimant is therefore awarded K1,000,000.00 for pain and suffering; K500,000.00 for loss of amenities of life; K500,000.00 for disfigurement and; K0 as special damages and costs of the action (to be taxed by the court). A total of K2,000,000.00 (two million kwacha).

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