

**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE No. 944 of 2019**

BETWEEN:

BRIGHTON KAMOWA CHIKEKWE.....CLAIMANT

AND

**PRIME INSURANCE CO. LTD 1ST DEFENDANT
EMMANUEL NOAH KUMDANA.....2ND DEFENDANT**

CORAM

**Mrs T. Soko : Assistant Registrar
Mr Kamunga : Counsel for the claimant
Ms Sawelengela : Counsel for the defendant
N. Munthali : Court Clerk**

ASSESSMENT ORDER

Background

This is an order on assessment of damages following a settlement agreement by the parties dated 18th May 2021 to enter the judgment in favour of the claimant. The claimant's claim is for damages for pain and suffering, loss of amenities of life, damages for disfigurement, damages for loss of earning capacity, K3,000.00 cost of police report, K10,500.00 as cost of medical report and costs of the action. The facts aver that on or about the 12th day of July 2019 at about 15:40 hours at

Namikasi along Zalewa road on a road section between Mdeka and Lirangwe, the driver of the motor vehicle registration No. BLK 8346 Toyota Noah drove the said motor vehicle and hit the claimant a motor cyclist. As a result of the accident, the claimant sustained injuries.

Evidence

In evidence, the claimant was the sole witness. He stated that as a result of the accident, he suffered loss and damage the injuries being; heavy knock against the left eye, large deep cut wound near the left eye, deep cut wound on the head, multiple bruises on the face, swollen face, painful right arm, multiple serious bruises on the right leg and deep cut wound on the right ankle. He complained of pains on his eye due to the injuries he sustained. He also stated that he has been feeling pain on his left arm when lifting heavy objects. He further stated that during the time that he was confined at home, he could not socially interact with those around him as he was in serious pain. He added that due to the injuries he sustained he has visible scars on his left eye, face and left arm. He tendered copies of health passport as part of evidence. In cross examination, the claimant stated that the only problem that he experiences now is the pain on his eye. He showed the Court scars on the left eye and arm.

In submissions, Counsel for the claimant submitted that the claimant should be awarded a sum of K2,000,000.00 as damages for pain and suffering, K2, 500,000.00 as damages for loss of amenities of life, K1,800,000.00 as damages for deformity and K1,700,000.00 as damages for disfigurement. The total quantum of damages that the claimant is claiming adds up to K8,500,000.00. Counsel cited a case of Thokozani Josamu & Luka Mandevu vs Prime Insurance Co. Ltd Civil Cause No. 1534 of 2010 where the 1st claimant was awarded K2, 000,000.00 on 4th April 2015 having sustained a cut wound on the knee, bruises on both hands, back injury, bruises all over the body and cut wounds on the head and hand. Counsel also cited a case of Owen Kayira and 2 Others vs Unusu Shaikh Personal Injury Cause No. 1160 of 2013 where the 2nd claimant was awarded a sum of K2, 500,000.00 for sustaining head injury, multiple soft tissue injuries on the head and was admitted to Kamuzu Central Hospital for one day. In the same case, the 2nd claimant was awarded a sum of K2, 300,000.00 as damages for loss of amenities of life. Counsel finally cited a case of Rabecca Mbwana vs Attorney General Civil Cause No. 1958 of 2009 where the Court awarded the claimant a sum of K1,000,000.00 as damages for deformity.

On the other hand, Counsel for the defendant submitted that the claimant should be awarded a sum of K850,000.00. Counsel also submitted that the claimant did not prove loss of amenities of life and disfigurement. Counsel cited a case of Paul Chamaza, Elaon Dzuwa and Chifundo Mnenula vs Edward Nyirenda and Prime Insurance Co. Ltd Personal Injury Cause No. 383 of 2013 where the 2nd claimant sustained soft tissue injuries namely a deep cut wound on the shoulder, multiple bruises on the left elbow and right arm and a cut wound on the left. The Court awarded the claimant a sum of K650,000.00 as damages for pain and suffering. The award was on 22nd April 2016. Lewis Goodson & James Mpanje vs Davie Dzonzi & Prime Insurance Co. Ltd Personal Injury Cause No. 95 of 2011 where the claimant suffered soft tissue injuries, bruises on the left shoulder and swellings leaving permanent scars. The Court awarded the claimant a sum of K700,000.00 as damages for pain and suffering and loss of amenities of life on the 20th September 2012. In Rodrick Dumbo vs Kennedy Mdala & Prime Insurance Co. Ltd Personal Injury Cause No. 719 of 2011 in which the claimant sustained soft tissue injuries and bruises. The award was K850,000.00 made on 16th June 2016. Counsel cited a case of Dellinga Kamenya vs Hastings Chitawo & Prime Insurance Co. Ltd Personal Injury Cause No. 374 of 2013 where the claimant sustained soft tissue injuries, bruises on the left hand and ankle, a painful back and left hand. In 2013, the Court awarded the claimant a sum of K700,000.00..

The Law

General law on damages

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been if it would have not been for the tort committed. See Namwiyo v Semu (1993) 16 (1) MLR 369.

In calculating damages, therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. See Admiralty Commissioners vs S.S Valeria (1992) 1 A.C. 242 at 248.

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329 of 2016 the Court quoting Wright vs British Railway Board 1938 AC 1173, 1177 stated that:

'Non-economic loss..., is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'

In the case of **City of Blantyre vs Sagawa** the court said the following:

'It would appear to us that if the award is to be conventional, an award for a similar injury should be comparable and should, to some extent, be influenced by amounts awarded in the previous case, either in the same or neighboring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.'

Pain and suffering

In damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).**

In the **City of Blantyre vs Sagawa 1993 16 (1) MLR 67** the court quoted Kemp and Kemp volume II paragraph 1007 where it was stated that;

Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like.

Page 831 of **Mc Gregor** on damages defines pain as the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering has been defined as the distress which is not felt as being directly connected with any bodily condition. Pain includes any pain caused by medical treatment or surgical operations rendered necessary by the injury inflicted by the defendant. Suffering includes fright at the time of the injury and fright reaction, fear of future incapacity, either as to health, sanity or the ability to make a living, and humiliation, sadness and

embarrassment caused by disfigurement. Also see Gedion Mhango vs Nico General Insurance Co. Ltd Personal Injury Cause No. 703 of 2016 (unreported).

Loss of amenities of life

Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed. See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).

Birkett L.J in Manley vs Rugby Portland Cement Co. (1951) C.A No. 286 stated that there is a head of damage which is sometimes called loss of amenities, the man made blind by the accident will no longer be able to see familiar things he has seen all his life, the man who had both legs removed and will never again go upon his walking excursions- things of that kind- loss of amenities. Mc Gregor on damages at Page 834 explains that loss of impairment of any one or more of the five senses is compensated under this head.

Besides loss resulting from interference with the plaintiff's sexual life.

DISFIGUREMENT

Disfigurement is concerned with change of looks of the individual. This may be scars, amputations and postures. See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported). Damages for disfigurement are normally awarded as part of pain and suffering. They are awarded separately if the plaintiff has been ridiculed, lost his social status, or that his is in need of plastic surgery. See Mary Kamwendo vs Stage coach Malawi Limited Civil Cause No. 840 of 1995.


SPECIAL DAMAGES

It is a trite law that special damages have to be specifically pleaded and strictly proved. See Phiri vs Daudi 15 MLR 404.

DETERMINATION

In the present matter, it is clear from the evidence that the claimant sustained a cut wound on the left eye, cut wound on the head, bruises on the face, bruises on the right leg and deep cut wound on the right ankle. There is no evidence from the defendants disputing the nature of the injuries that the claimant sustained. The nature of the injuries shows that the claimant suffered pain. Besides, it is in evidence that the claimant still experiences pain on the eye which means the pain is ongoing. It is also in evidence that the claimant cannot lift heavy objects due to the accident and suffered disfigurement as he healed with scars on the eye, arm and ankle. Considering what I have stated above, all the circumstances of this case, comparable cases cited by both Counsel and the devaluation of currency, I award K2, 000,000.00 as damages for pain and suffering, K1,000,000.00 as damages for loss of amenities of life and K1,300,000.00 as damages for disfigurement. In total I award the claimant a sum of K4, 300,000.00 as damages. Special damages were not proved on the balance of probabilities so I will not award special damages. The claimant is also awarded party and party costs.

Made on this 17th day of November 2021.



T.Soko

Assistant Registrar