

**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE No. 886 of 2020**

**BETWEEN:**

**MIKE MTUWA(suing as litigation guardian for Bertha Mtuwa, minor)...1<sup>ST</sup> CLAIMANT  
MIKE MTUWA (suing as litigation guardian of Linly Mtuwa, Minor).....2<sup>ND</sup> CLAIMANT**

**AND**

**THOMAS MATEMBA..... 1<sup>ST</sup> DEFENDANT  
PRIME INSURANCE CO. LTD.....2<sup>ND</sup> DEFENDANT**

**CORAM**

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

**ASSESSMENT ORDER**

The claimants commenced an action against the defendants through a litigation guardian claiming damages for pain and suffering, damages for loss of amenities of life and costs of the action. On 16<sup>th</sup> March 2021, a judgment on liability against the defendants was entered by the agreed order. The facts of the case aver that on or about the 1<sup>st</sup> February 2019, the 1<sup>st</sup> defendant was driving a motor vehicle registration number NU518 Toyota Hiace Minibus under insurance certificate

number 131542319 from the direction of Zingwangwa/ Makwasa road junction heading towards Calvary junction along Soche East Road when upon arrival at house No. 123, he lost control of the motor vehicle, swerved to the far right and in the process hit the claimants who were buying sausages along the road. The claimants sustained multiple injuries.

In evidence, the witness Mike Mtuwa adopted his witness statement. He stated that 1<sup>st</sup> claimant sustained a dislocated right knee, headache and multiple bruises. The 2<sup>nd</sup> claimant sustained fracture of the left humerus, bruises on the left arm and chest pains. The witness stated that the 2<sup>nd</sup> claimant still complains of the pain on the shoulder. The witness tendered medical documents for both claimants.

In cross examination, it was stated that the 1<sup>st</sup> claimant does not complain of headache but pains on the leg. He stated that the knee dislocation was treated. He stated that the 2<sup>nd</sup> claimant was in arm sling. He stated that sometimes the 2<sup>nd</sup> claimant complains of the pain on the shoulder.

In submissions, Counsel for the claimant submitted that the 1<sup>st</sup> claimant should be compensated with a sum of K4,500,000.00 and the 2<sup>nd</sup> claimant should be awarded a sum of K6,000,000.00 as damages. Counsel cited a number of comparable authorities.

On the other hand, Counsel for the defendant submitted that the 1<sup>st</sup> claimant should be awarded a sum of K1,200,000.00 and the 2<sup>nd</sup> claimant should be awarded a sum of K1,600,000.00. Counsel also cited a number of comparable authorities.

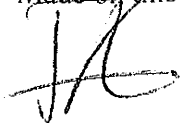
In the present matter, I have to decide the quantum of damages that should be awarded to the 1<sup>st</sup> and 2<sup>nd</sup> claimant. It is not in dispute that the 1<sup>st</sup> claimant sustained a dislocated knee and multiple bruises. The cross examination did not dispute the injuries and the defendant did not bring a witness to dispute the injuries that the 1<sup>st</sup> claimant sustained. It should be noted that dislocation is not a minor injury. The 1<sup>st</sup> claimant herein had pain and suffering which should not be undermined. Counsel for the claimant cited case of Joseph Mayumba vs Kondwani Phiri and General Alliance Insurance Co. Ltd Personal Injury Cause No. 533 of 2013 where the Court in April 2018 awarded the claimant a sum of K3,500,000.00 for dislocation of the elbow and the arm was cast in PO.P. Counsel also cited a case of Grivin Charles Lundu vs Prime Insurance Co. Ltd Personal Injury Cause No. 903 of 2014 where the claimant was awarded the sum of K2,900,000.00 for bruises, dislocation of leg and cut on the forehead. The Court made the award on 22<sup>nd</sup> May 2017. Counsel

on the other hand cited a case of Joana Billiat and 2 others vs Gift Soko and Prime Insurance Co. Ltd Personal Injury Cause No. 384 of 2015 in which the 1<sup>st</sup> claimant sustained a dislocated hip and the 2<sup>nd</sup> claimant sustained a dislocated left shoulder. The claimants were awarded K1,000,00.00 each on 25<sup>th</sup> January 2016. I have considered the nature of the injuries that the claimant sustained, the comparable cases and the devaluation of currency and find that the claimant should be awarded a sum of K2, 000,000.00 in all heads of damages.

Regarding the 2<sup>nd</sup> claimant, it is also uncontroverted evidence that the claimant sustained a fracture of the left humerus, minor bruises on the left arm and chest pains. The claimants arm was in arm sling. Considering the nature of the injuries herein, the 2<sup>nd</sup> claimant went through severe pain and suffering. The claimant still feels pain on the shoulder and the pain seems ongoing. Counsel for the claimant cited a case of Thom Alfred (A minor suing through Mr Patrick) vs General Alliance Insurance Personal Injury Cause No 656 of 2018 where the claimant suffered fractured arm, painful leg, swollen leg and difficulties in walking. The claimant was awarded a sum of K2, 500,000.00 as damages for pain and suffering, K1,450,000.00 for loss of amenities of life, and K1,200,000.00 as damages for disfigurement. The award was made on 20<sup>th</sup> August 2020. On the other hand, Counsel for the defendant cited a case of Batumevo Paulo vs United General Insurance Co. Ltd Civil Cause No. 2265 of 2010, the claimant sustained an open fracture of the tibia and fibula on the right leg. Considering the comparable cases herein and the devaluation of currency, I award the 2<sup>nd</sup> claimant a sum of K4,000,000.00 in all heads of damages. The 2<sup>nd</sup> defendant will pay up to the policy limit.

Costs are for the claimant.

Made on this 25<sup>th</sup> day of November 2021.



T.Soko

Assistant Registrar