



THE REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
Personal Injury Cause no. 18 OF 2019

Between

Lembetsani Saizi..... Claimant

and

Yamikani Mario..... 1<sup>st</sup> Defendant

Prime Insurance Company Limited.....2<sup>nd</sup> Defendant

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CORAM:	<i>Madalitso Khoswe Chimwaza,</i>	<i>Assistant Registrar</i>
	<i>Narai Longwe</i>	<i>Counsel for the claimant</i>
	<i>E. Chikwakwa</i>	<i>Counsel for defendants</i>
	<i>G. Kumwenda</i>	<i>Court Clerk</i>

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**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

1. The claimant commenced action against the two defendants claiming damages for personal injury. Judgment on liability against the two defendants was entered through an agreed order before Justice M.C.C. Mkandawire on 11<sup>th</sup> December, 2019. This matter was set down to assess damages and both parties were present.

**Brief Facts**

2. The claimant testified as the only witness in this case and he adopted his witness statement as evidence in chief. He stated that it was on 10<sup>th</sup> October, 2018 when he was crossing a road from the right to the left at Lilongwe Technical College when he was hit by a motor vehicle registration No. LL 480 Toyota Noah which was coming from the direction of Lilongwe Girls Secondary School towards the direction of area 24 along Kamuzu Procession road.
3. As a result of the impact of the accident the claimant he sustained the metatarsal fracture and mild foot injuries. In his witness statement he said he was treated and admitted at the

hospital while his medical report indicated that he was treated as an out-patient from 10<sup>th</sup> -12<sup>th</sup> October, 2018. He said currently he still feels pain on the left leg and he also lost a front tooth as he had a cut wound on the upper gum and lower lip. He tendered his police and medical reports which were marked as LS1 and LS2.

4. He said prior to the accident he was working as a guard but did not disclose his salary neither did he provide any evidence of loss as a result of the accident.
5. When cross examined the claimant said he sustained a metatarsal fracture of the left leg and he had x-rays to that effect.
6. Counsel submitted that the claimant should be awarded a sum of K5,000,000. for pain and suffering, loss of amenities of life and disfigurement and special damages K8,000 for medical and police reports.

#### Issue for Determination

The only duty of this court is to assess how much damages should be awarded to the claimant for the injuries.

#### GENERAL PRINCIPLES ON DAMAGES

7. A person who suffers injury as a result of another's negligence is entitled to be compensated for the injury suffered by the negligent party. Such damages are awarded to compensate the plaintiff in so far as money can do (see *Nakununkhe v Paulo Chakhumbira and Attorney General* Civil cause no.357 of 1997 (Unreported). As was held in the case of *Namwiyo v Semu et al* [1993] 16 (1) MLR 369, in awarding compensation, the court attempts to put the plaintiff in the position he/she would have been but for the injury arising from the tort. Such damages however cannot be quantified by any mathematical calculation as such the court relies on decided cases of a comparable nature for guidance. Sight must not be lost however, of peculiar facts of each case in order to avoid occasioning injustice by inflexible maintenance of consistency and uniformity (*D. Kwataine Malombe & Another vs. G.H. Chikho t/a Bec Line Minibus* Civil Cause No. 3687 of 2001 (HC Unreported)).
8. It is the principle in awarding damages that the damages must be just, fair and reasonable. This means that not to be too excessive and not too moderate.

In *warren and Another vs King and Others* [1963] 3 All ER521 at page 526, Sellers LJ puts the principle in the following terms:

*'the jury were not told that the money awarded should be reasonable and not extravagant or oppressive... it has been the invariable rule that judges have warned juries to keep to standard of moderation and fairness in the interest of both parties.'*

#### PAIN AND SUFFERING AND LOSS OF AMENITIES OF LIFE

9. Pain is used to suggest physical experience of pain caused by and consequent upon the injury while suffering relates to the mental elements of anxiety, fear, embarrassment and

the like. On the other hand, loss of amenities of life embraces all that which reduces the plaintiff's enjoyment of life, his deprivation of amenity whether he is aware of it or not (See *City of Blantyre v Sagawa* [1993] 16 (1) MLR 67). In *Kanyoni v Attorney General* [1990] 13 MLR 169, 171 the court held that loss of amenities of life must include the loss of all the things the claimant used to be or to do, see, and experience-they need not be of leisurely nature at all. In the case of *Manley v Rugby Portland Cement and Company* [1950] No 286 (reported in Kemp and Kemp, "Quantum of Damages," Volume 1 2<sup>nd</sup> edition 1961 at p.2640) Birkett, LJ had this to say:

*"There is a head of damages which is sometimes called loss of amenities; the man-made blind by accident will no longer be able to see familiar things he has seen all his life, the man has both legs removed will never again go upon his walking excursions, things of that kind-loss of amenities."*

10. Although pain and suffering and loss of amenities for life are distinct however for purposes of quantum the court does consider them together and make a single award under those heads. (see *Henry Manyowa v. Phiri and Prime Insurance Co. Ltd* Personal Injury Cause No. 139/2012; *Andrew Katola v. Prime Insurance Co Ltd* Civil Cause No. 2807/2009).
11. Factors that will be taken into account by Court in awarding damages for pain and suffering include the extent of injuries suffered, period of hospitalization, prospects of pain and suffering continuing, the kind of treatment received and degree of permanent incapacity. *James vs PEW Ltd* [1993] 16(1) MLR 128; *Tsegula vs Msaka & another*, Civil Cause No. 565 of 2009
12. In the present case the claimant suffered excruciating pain as a result of the accident and experienced discomfort as he sustained a metatarsal fracture. The claimant still feels pain on the left leg and still uses clutches when walking long distance.

#### **Comparable Awards**

13. Counsel for the claimant gave comparable cases of injury but were not similar to the nature of injury of the claimant. However there are several cases of comparable nature of injury to that of the claimant which I will cite and refer to in determining this matter.
14. The case of *Chimwemwe Shaba vs Levi Njikho and another*, Personal injury case No. 989 of 2018, (LL Registry Unreported) the claimant sustained an open fracture of the metatarsal of his left foot and cut wound on his right eye brow. He was awarded MK5,000,000.00 for pain and suffering, loss of amenities of life and K700,00 for disfigurement on 13<sup>th</sup> February, 2019.
15. In the case of *Lucy Misomali vs Natasha Khomba and another*, personal injury cause No. 596 of 2017 (LL Registry Unreported) the claimant sustained fracture of her left ankle. Her leg was put in POP for four weeks. She could no longer walk without the aid of clutches. She was awarded MK5,000,000.00 for pain and suffering, loss of amenities of life and K600,000 for disfigurement on 1<sup>st</sup> July, 2019.

16. Without undermining the pain and suffering that the claimant suffered in the present case but the severity cannot be compared to the above cited case. Applying my mind to the facts of the present case and comparable awards the court finds an award of **K5,000,000.00** to be adequate compensation for pain and suffering and loss of amenities of life. It is so awarded.

#### **DISFIGUREMENT**

17. As a result of the injury that the claimant lost a front tooth. This is a scar that will never go away. It is the view of the court that **K 400,000.00** will be adequate compensation for disfigurement. It is awarded.

#### **Special Damages**

18. The plaintiff is also claiming special damages in the sum of K8,000 as costs for obtaining police and medical reports. It is trite law that such special damages must strictly be pleaded and proved. This term means actual financial loss or other damage quantifiable in money terms suffered as a result of the wrongful act. See **Mkweza vs Chakwera [1993] 16(1) 332 (SCA)**.

In the case of **Ilkiw vs Samuels [1963] 2 All ER 479**, Lord Diplock stated that special damages in the sense of monetary loss is that which the plaintiff has sustained up to the date of trial, must be pleaded and proved.

In claims of personal injuries arising from road accidents special damages claimable may include (funeral expenses, cost of police report and medical report, past loss of earnings). The major factor limiting the category of damages claimable is the doctrine of remoteness of damage. In the case of **Kharika vs National Bank of Malawi [1995] 2 MLR 574(HC)**, Mbalame J, quoted with approval the dictum of Lord Hansworth, in **Re Simms [1934] Ch.17 CA** where he observed that "special damages may in certain cases be allowed, but it must be, as in all other cases of damages, the direct result of the tort"

In the present case the acquisition of a medical report and police report are a direct result of the tort that was committed and it is inevitable the same could not have been given for free. It is common knowledge that a fee is paid for police report and a fee is also paid for a medical report. Therefore although there is no evidence of payment of K8,000 as claimed by the claimant the court is aware that at least a fee of K3,000 is payable for police report. Therefore the court awards the sum of **K8,000.00** as a reasonable expense for obtaining police report and medical report.

#### **ORDER**

19. The claimant is awarded a total sum of **K5, 408,000.00** for pain and suffering, loss of amenities of life, disfigurement and special damages for police and medical report.

#### **COSTS**

20. The general principle is that costs are discretionary as per **Order 31 rule 3 (1) of the CPR** and also the case of **Hahn vs Spearhead Holdings Ltd and Others [1990] 13 MLR 143 (HC)**. Costs normally follow the event, and this means a successful litigant will be entitled to costs of the action.
21. Looking at the history of the matter, the movement of the file and how long it has taken to mediation stage where it was settled this Court proceeds to make a summary award of costs on a standard basis pursuant to **Order 31 rule 4(1) of the CPR** taking into account the following factors: that the case was important to the claimant due to the injuries suffered and it was important to the defendants as well due to the amount of claim at stake. The Court will consider the proportionality and reasonable costs that may be incurred for a matter that did not proceed to full trial. The court is mindful that Claimants filed an assessment bundle with case authorities and the amount of time that might have been spent in preparing for the matter at all stages by Counsel of less than 10 years at the at the Bar.
22. It is the considered view of the Court that a sum of **K1,000,000.00** be awarded as party and party costs and this is proportional and reasonable to the amount of work done in the case considering all other relevant factors as outlined above. It is so awarded.

**23. Summary of awards:**

For the avoidance of doubt the claimant is awarded damages as follows:

Pain and suffering and loss of amenities of life K5,000,000.00

Disfigurement K400,000.00

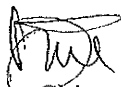
Special damages K8,000.00

Party and Party costs K1,000,000.00

**Right of appeal**

24. Either party aggrieved by the award of this court has the right to appeal to the Supreme Court of appeal.

Made in Chamber this 14th day of December 2021 at High Court Lilongwe Registry.



Madalitso Khoswe-Chimwaza

**ASSISTANT REGISTRAR**