



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL DIVISION  
CIVIL CASE NO. 205 OF 2017**

**BETWEEN**

**CHRIS KALICHERO..... CLAIMANT  
-AND -**

**JAFALIE SIMBU .....1<sup>ST</sup> DEFENDANT  
PRIME INSURANCE COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**

**CORAM:**

**Brian Sambo, Assistant Registrar**

Mr. U. Banda, counsel for the Claimant

Defendants, absent and unrepresented

Mr. Kumwenda, Law Clerk/Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

**BACKGROUND**

On 20<sup>th</sup> August, 2021, the Claimant obtained a default judgment for the following;

- a. Damages for pain and suffering
- b. Damages for loss of amenities of life
- c. Damages for deformity and or disfigurement
- d. General damages for incapacitation of body parts

- e. Special damages incurred on medical and police report
- f. Costs of this action.

On 29<sup>th</sup> September, 2021 I received evidence on assessment *interparte*. I now resurface to provide my own assessment of damages, but before I do so, let me first give a summary of the facts of this matter.

### **BRIEF FACTS**

On 18<sup>th</sup> January, 2020 at about 08.20 hours, the 1<sup>st</sup> Defendant was driving motor vehicle registration number KU 4415 Toyota Hiace Minibus from the direction of Lilongwe Hotel heading towards Kamuzu Procession Road. Upon arrival at National Bank Zebra Crossing, he hit a male pedestrian, Chris Kalichero who was, at that time, crossing from left to right side of the road. Following the impact, the victim sustained a fracture on his lower leg. The 1<sup>st</sup> Defendant was found by the police to be the sole cause of the accident as he was driving his motor vehicle, recklessly. He was fined; to pay to the Malawi Government the sum of MK10, 000.00 which he did under General Receipt Number 6833663.

### **EVIDENCE**

The Claimant was the only witness in his case. Testifying as PW1 he told the court that, as a result of the accident, he sustained ankle fracture in his left leg. He showed the court the healed ankle but it was deformed; it looked swollen. He further stated that he also sustained bruises on the anterior aspect of the right ankle. He added that he had a manipulation surgery, and was dressed in a Plaster of Paris (POP) cast for a period of four weeks. He testified that he was still in pains on his left ankle to the extent that he could not stand or walk for a long time. He said his degree of incapacity was assessed at 35%. He said there were chances that his left ankle might require subsequent surgical operation. The witness further tendered a Medical Report and a Police Report for which he intimated that he had spent MK15, 000.00.

### **ISSUE**

The hearing was conducted in order to assess the appropriate level of damages payable by the Defendants under the heads specified above.

### **DETERMINATION**

I have gone through the evidence adduced by the Claimant, and also submissions made by counsel. I had time to look at other comparable case law

relevant to the present assessment, as well. The law, when it comes to cases of this nature requires that the victim should prove that he indeed incurred or suffered some damage and that the defendant was the cause of his injuries out of his negligence. Once that has been done, the duty remains with the court to assess the extent to which the victim should be compensated. This follows the cardinal principle of ***restitution in integrum*** which simply means to be compensated as far as money can do; the law will try to place the injured person in the same condition he was before the accident had happened. See **Black's Law Dictionary 9<sup>th</sup> Edition p1428**.

I appreciate the fact that unliquidated or general damages are difficult to assess. However, it has been held in **Raninger Simbeye vs. Chibowa & another Civil Cause No. 58 of 2012**, that the only possible way to circumvent to these difficulties is to seek guidance from decided cases of a comparable nature. And that in doing so, the court bears in mind the devaluation of the Malawi Kwacha that has obtained since the awards in those comparable cases were made. Further, the courts also bear in mind the merits of each case to avoid occasioning injustice.

#### **DAMAGES FOR PAIN AND SUFFERING AND LOSS OF AMENITIES OF LIFE**

The definition of pain and suffering was given in the case of **Esnart Mpulula v Prime Insurance Ltd**, Personal Injury Cause number 108 of 2016, where the court stated that '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, embracement and sickness. Whereas 'Loss of amenities of life' was described as loss of faculties of pleasures of life resulting from one's injuries. In that case, the plaintiff fell on the ground when she was hit and had to be rushed to the hospital where her injured ankle was placed in plaster of Paris. For this, she was awarded, on 31<sup>st</sup> day of May 2017 compensation of up to **MK2, 000,000.00**.

In **Javious Enerst v Steven Levison & Prime Insurance Company**, civil cause no. 92 of 2014, the plaintiff was awarded on 22<sup>nd</sup> March 2018, **MK6, 000,000.00** for sustaining fractured tibia of left leg, multiple bruises, multiple cuts on the upper and lower extremities and dislocated shoulder.

In **Mica Banda vs. Fabiano & others**, Civil Cause No. 82 of 2013, the court on 4<sup>th</sup> May 2018 awarded the plaintiff the sum of **MK3, 500,000.000** for sustaining Massive bruises on his scalp, Bruises on his face, back and posterior chest.

On 30<sup>th</sup> day of August 2018 the court in **Joseph Manyumba v Kondwani Phiri & Other**, Civil cause no. 533 of 2013, awarded the plaintiff the sum of **MK3 500 000.00** as damages for all heads on the fact that he sustained a dislocation of right elbow.

The Medical Report herein shows that the Claimant sustained an ankle fracture of his left leg, and bruises. There is no doubt that the Claimant felt great pain during and after the accident. During his testimony, he told the court that he still felt some pain on his injured leg, and could not stand or walk for a long time. Therefore, I feel that it would be just to award him **MK2, 000,000.00** as being damages for pain and suffering and loss of amenities of life.

### **DAMAGES FOR DISFIGUREMENT AND DAMAGES FOR INCAPACITATION OF BODY PARTS**

'Disfigurement' can simply be described as permanent physical deformity of the body. In **Ronaldo Likoloma vs. Iqbal Mahomed**, Civil Cause No. 870 of 2013 the plaintiff on 14<sup>th</sup> May 2017 was awarded the sum of **MK350 000.00** being damages for disfigurement out of dog bites that left a visible scarring.

In **Mica Banda vs. Fabiano & others, Supra**, the court awarded the plaintiff the sum of **MWK600 000.00** being damages for disfigurement on his head and other bodily parts.

In this case, the Claimant sustained 35% permanent body incapacitation. I saw his leg during his testimony; it was way different from the other in that it was now big and deformed although the fracture got healed. Considering the comparable case law cited above and the extent of the disfigurement, I award him **MK1, 000 000.00** as compensation.

### **SPECIAL DAMAGES**

Generally, special damages are specifically pleaded and strictly proven. See **General Farming Limited v Chombo** (1996) MLR 16. On this part I have appreciated the tendering of the Medical report and Police Abstract Report as evidence for this. The Claimant spent **MK15, 000.00** on the same, and I award him thus.

### **COSTS**

It is a settled law that cost follow the event. The successful litigant is compensated for the troubles faced in commencing a case. Costs are for the Claimant, and shall be assessed separately if not agreed upon by the parties.

**CONCLUSION**

In summary, the Claimant is awarded as follows:

- i. **MK2,000,000.00** being damages for pain and suffering and loss of amenities of life
- ii. **MK1, 000,000.00** being damages for disfigurement/incapacitation of body parts.
- iii. **MK15,000.00** being special damages

In total, the Defendants shall pay the sum of **MK3, 015,000.00**. This whole amount has to be paid within 7 days from today.

Made in chambers today Wednesday the 13<sup>th</sup> of October, 2021.

**Brian Sambo**  
**Assistant Registrar**

