



**IN THE HIGH COURT OF MALAWI**

**CIVIL DIVISION**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 413 OF 2018**

**Between**

**BLESSINGS BEYARD (Minor suing through his Litigation Guardian Patricia Beyard)..... CLAIMANT**

**-and-**

**ALFRED FUTE ..... 1<sup>ST</sup> DEFENDANT**

**PRIME INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

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**CORAM: Austin Jesse Banda, Assistant Registrar**

Mailosi, for the Claimant

Phiri, for the Defendants

N. Munthali, Clerk/ Official Interpreter

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**JUDGMENT ON ASSESSMENT OF DAMAGES**

**Background**

Alfred Fute (1<sup>st</sup> Defendant) and Prime Insurance (2<sup>nd</sup> Defendant) were adjudged to be liable and were ordered to pay damages; for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. The matter came for assessment of damages, first before Her Honor Soko and before the matter was adjourned for the purpose that Blessings Beyard (Claimant and minor) was not present when his litigation guardian and mother, Patricia Beyard gave evidence, and cross examination could not proceed. The matter then came for continued hearing but had been assigned to me by the Registry. With consent of both parties, I heard evidence of Patricia Beyard afresh and hereby proceed with assessment of damages.

### Evidence

Patricia Beyard told the court that her son Blessings Beyard, then 6 years old, was hit by a car, registration number PE 2531 as he crossed a road. She said that from the impact, her son sustained an open fracture on the distal tibia femur, and a cut wound on the leg. She said the degree of permanent incapacity was assessed at 30%. She said her son went through wound debridement.

Patricia Beyard said that her son was still experiencing excessive pain, difficulty in walking, post traumatic arthritis, and that he was unable to do household chores and manual work. She said that she incurred a cost of K3,000.00 for a police report and K10, 500.00 for a medical report.

In cross examination, Patricia Beyard said that her son was admitted for 2 months in hospital and then she had to go back to the hospital for skin grafting. She said that she did not produce any receipts for the police and medical report expenses but she remembered to have expended K3,500.00 and K4,000.00 for those respectively.

Patricia Beyard was the only witness for the claimant. The defendants did not call any witnesses.

### Issue

The only issue in the matter, this far is the amount of damages awardable to the claimant for his damage in the accident attributed to the wrong of the defendants.

### Law and Fact

The starting point is that assessment of damages presupposes that damages have been proved and the business that remains is the measure of the amount of the damages- see the case of **Ngosi t/a Mzumbamzumba Enterprises v. Amosi Transport Co Ltd [1992] 15 MLR 370(HC)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**.

Damages in a case like this one, are not awarded to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of the defendant's wrongful act or omission. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998**, High

**Court, Principal Registry (unreported).** The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported).**

#### Pain and Suffering

The word 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, embarrassment and sickness- Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8. The award of damages for pain and suffering depends upon the claimant's personal awareness of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174 @ 183.**

#### Loss of Amenities of Life

Damages are paid under the head of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life, which amounts to substantial loss, whether the claimant is aware or not of that loss. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA); Kemp and Kemp, The Quantum of Damages, Vol. 1 (2<sup>nd</sup> Edition), 1961, p. 624.**

#### 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 Motal Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).** Damages for disfigurement are awarded separately if the Claimant has been ridiculed, lost his social status, or that he is in need of plastic surgery. See **Mary Kamwendo v Stage Coach Malawi Limited Civil Cause Number 840 of 1995.**

#### Injury and Loss in this Case

I believe that the minor claimant sustained all the injuries that were stated in his mother's testimony. There is no doubt about the extent of the injuries and the condition of the minor in the aftermath of treatment, even after going through cross examination. I only have issues with the cost of the medical report. No receipts were tendered to prove the expense for the medical report. It is a special damage. It ought to have been strictly proved. The police report I believe was paid for, at the cost of K3, 000.00 as a government general receipt number 3576671 was issued as is evidenced on the police report on file.

### Comparable Cases

In **John Madeya v. Maphumuzana Jere and Prime Insurance Co. Ltd, Personal Injury Cause No. 476 of 2012**, the claimant was awarded the sum of K3, 500, 000.00 for pain and suffering and disfigurement, K1, 500,000.00 for loss of amenities of life on 12<sup>th</sup> June 2018 for injuries as follows open fracture of the femur, rib fractures, backache and soft tissue injuries.

In **Malichi v. Prime Insurance Company Ltd, Civil Cause Number 2613 of 2009, High Court, Principal Registry (unreported)**, the claimant suffered a cut wound on the scalp, bruises on the face, swollen head and fracture of the left tibia. He had headaches and limped when walking. He was awarded K4,500,000.00 for pain and suffering and loss of amenities of life, on 29<sup>th</sup> May, 2012.

In **Christine Mande v Charter Insurance Company Personal Cause No. 329 of 2016** the claimant was awarded MK 6,300,000.00 as damages for pain and suffering and loss of amenities of life after sustaining a fracture of the right femur, dislocation of the right hip joint, cuts on the head and loss of consciousness.


### Determination

After weighing the comparable cases, the circumstances of this case and factoring in the loss of value of the currency since the awards, I award the claimant the sum of **K4, 000,000.00** for pain and suffering. I award him **K1, 350,000.00** for loss of amenities of life and **K1, 000, 000.00** for deformity. I also award him **K3, 000.00** for the special damage of obtaining a police report.

### Conclusion

In conclusion, the Claimant is awarded a total sum of **K6, 353,000.00**. The Claimant is also awarded cost of the assessment of damages.

Made this 29<sup>th</sup> day of July, 2021.



Austin Jesse Banda

**ASSISTANT REGISTRAR**