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REPUBLIC OF MALAWI  
**IN THE HIGH COURT OF MALAWI**  
PRINCIPAL REGISTRY  
**PERSONAL INJURY CAUSE NUMBER 137 OF 2021**

**BETWEEN:**

JONATHAN BONONGWE.....CLAIMANT

**AND**

GIFT GANDA.....1<sup>ST</sup> DEFENDANT

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

**CORAM: WYSON CHAMDIMBA NKHATA (AR)**

Mr. P. Minjale- of Counsel for the Claimant

Ms. Chida- Court Clerk and Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

*INTRODUCTION*

On 24<sup>th</sup> October, 2020, the claimant was hit by a Messy Ferguson Tractor registration number BE9296 which was being driven from the direction of Lirangwe heading towards Lunzu upon colliding with motor vehicle registration number CK5862 Benz. Consequent to which, the claimant suffered injury. Through a writ of summons issued on the 10<sup>th</sup> of March, 2021, the Claimant commenced this action claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs of the action. He sued the 1<sup>st</sup> defendant as the driver of the tractor at the material time and the 2<sup>nd</sup> defendant as the insurer of the said tractor. The issue of liability was settled in favour of the claimant through a Default Judgment entered on the 24<sup>th</sup> of May, 2021 by Honourable Justice Madise. Subsequently, the matter was referred to this court to determine the quantum of damages that would adequately compensate the claimant for the losses he suffered which I must now consider.

## *THE EVIDENCE*

Before I proceed with the evidence adduced in this matter, I must point out that the record shows that since commencement of this matter, the defendants are yet to make an appearance. There is evidence that they were duly served with the court process scheduling the assessment of damages herein. Nonetheless, they still did not grace the court with their presence. There being no excuse for their non-committal to the proceedings, the court proceeded to hear the claimant on assessment of damages.

Through his witness statement that he adopted in court, the Claimant testified that as a result of the accident, he sustained a fracture of the right hand and multiple bruises on the right hand, a fracture of the left hand, a dislocation and painful collar bone, a dislocation and painful ribs, painful back and bruises on the shoulder and bruises on the right hip. He was treated at Queen Elizabeth Central Hospital. He exhibits a copy of the health passport and Medical Report from Queen Elizabeth Central Hospital marked as **JB1** as evidence of the injuries which he sustained. He laments that as of now, he has scars all over the body ranging from my both hands, shoulders, on the hands and legs. He has multiple cuts and bruises on the body that led to these bruises.

It is also his testimony that upon the occurrence of the accident, he reported the matter to Lunzu Police Station from where he was referred to the hospital. He lost consciousness on the same place that he only recovered at the hospital. He further got a report of the accident at the same Lunzu Police which indicated that the 1<sup>st</sup> Defendant was negligent in causing the accident by improper overtaking and was charged with an offence of reckless driving. He exhibits a copy of the Police report marked as **JB2**. He was admitted at Queen Elizabeth Central Hospital from 23<sup>rd</sup> October to 17<sup>th</sup> December 2021. He was in a Plaster of Paris for over month. For this period, he suffered pain. He lost earnings for over 6 months due to the injuries that he sustained.

He further testified that as of now he cannot do piece works as he used to do. Even at my work, he can no longer do his normal work of a guard and he works at the reception right now. He still feels a lot of pain in both hands and ribs which still remains swollen and he still goes for physiotherapy at Kadidi Lunzu and thus his arm and ribs have developed a permanent disability. He also feels a lot of pain in left shoulder and neck and can neither walk long distances nor do manual work which he used to do such as washing clothes or carrying heavy objects and doing exercises.

Such was the evidence on assessment of damages. I would like to thank Counsel for the guidance as evidenced by the well-researched submissions filed in support of the assessment of damages herein in which several authorities have been cited. This court has given the submissions and the authorities counsels cited the most anxious consideration.

## *THE LAW AND APPLICABLE LEGAL PRINCIPLES*

On the law and principles governing assessment of damages, it is trite that the purpose of awarding damages is to compensate the injured party as nearly as possible as money can do. That is to say, to place the claimant in a position he would be had he not suffered the damage or loss. This is what is termed the principle of *restitutio intergrum*. It is not possible to quantify fully damages for loss of dependency and loss of expectation of life. However, courts use comparable cases as a guide in coming up with a reasonable quantum of damages. See the case of **Kalinda –vs- Attorney General (1992) 15 MLR 170 at p 172**. The Court will also consider factors like passage of time when the award was made, as well as the value of the kwacha at the time of making the award.

### *Pain and suffering*

Pain means the physical hurt or discomfort attributable to the injury itself or consequent upon it. It includes the pain caused by any medical treatment which the plaintiff might have to undergo. See **Sakonda v S. R. Nicholas** Civil Appeal Cause No. 67 of 2013. ‘Suffering’ on the other hand denotes the mental or emotional distress which the plaintiff may feel as a result of the injury. This includes but not limited to anxiety, worry, fear, torment and embarrassment. In **City of Blantyre v. Sagawa** [1993] 16 (1)MLR 67. ‘pain’ and ‘suffering’ were defined to suggest physical experience of pain caused by consequent upon the injury while “suffering” relates to the mental element of anxiety, fear, embarrassment and the like.

### *Loss of amenities of life*

In the case of **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 able to do, see, and experience. Justice Mwaungulu (as he then was) in the case of **Mtika v. US Chagomerana t/a trans Usher (Zebra Transport)** [1997] 2 MLR 123, 126 explained that this head covers the loss caused by the injury in that the claimant will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury.

### *Disfigurement*

Damages under the head of disfigurement are paid for the change in physical form of a person injured either as a result of the impact of the injury or its treatment, such as scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things- see- **Francis Chikoti vs- United General Insurance Company Limited** Personal Injury Cause No. 730 of 2016. Justice Potani (as he was then) in the case of **James Chaika v NICO General Insurance Company Ltd** Civil Cause No. 909 said disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with.

## *COMPARABLE CASES*

In this case, the claimant claims that he sustained fractures, dislocations, body pains and soft tissue injuries. In awarding damages for pain and suffering, loss of amenities of life and disfigurement, Counsel representing the claimant calls upon the court to consider the following cases:

- **Gedion Mhango vs Nico General Insurance Co LTD Joseph Andrew Personal Injury Cause Number 703 of 2016**, in which the claimant suffered pain, a fracture on his right leg, serious cuts on the head, and cuts on the right hand side of the body and on the backside. The court awarded the sum of MK6,700,000.00 as damages for pain and suffering and loss of amenities. The award was made on 31<sup>st</sup> January, 2017.
- **Zuze Bonjesi v Prime Insurance Co. Ltd, Civil Cause No.488 of 2011, Civil Cause Number 811 of 2011** in which the claimant suffered a fracture of the left tibia, big wound exposing the bone and tendons and a deep wound on the right leg. She was awarded the sum of MK7,000,000.00 for pain and suffering and loss of amenities.
- **Stanley Chiwaula v Mosha Missi Prime Insurance Co Ltd Cause No.92 of 2014**, in which the claimant sustained closed fracture of the fore arm (Radius/ Ulna) severely sprained knee joint, nerve damage on the left hand and wound on the left hand. He was awarded the sum of MK7,400,000.00 as damages for personal injuries, loss of amenities and disfigurement.

In view of the foregoing, Counsel representing the Claimant prays for the award of MK22,000,000.00 for damages for pain, suffering and loss of amenities of life and for disfigurement.

## *DETERMINATION*

In making assessment, I begin by pointing out that I had the opportunity to observe the aftermath of the injuries sustained by the claimant and his present physical condition. The uncontroverted evidence indicates that he suffered multiple fractures, multiple dislocations, bruises and body pains. Having considered the nature and extent of the injuries suffered by the claimant, this court finds that he suffered considerable pain and suffering resulting from the accident and the treatment he received. The evidence indicates that he still feels a lot of pain in both hands and ribs which still remain swollen. It is quite evident that the injuries have also affected him in a number of ways. In his testimony, he indicates that he can neither walk long distances nor do manual work which he used to do such as washing clothes or carrying heavy objects and doing exercises. I take it this is a case that calls for a substantial award bearing in mind the claimant's diminution in the enjoyment of life as well as the physical pain and suffering he underwent and still undergoes.

Counsel representing the claimant has cited three cases for comparative purposes. The cases involve at least a fracture and other soft tissue injuries. Observably, they all indicate awards bordering at K7,000,000.00. The distinguishing factor with this case is that the claimant herein suffered multiple fractures, multiple dislocations and soft tissue injuries that have left scars here and there over his body. I am compelled to say the injuries suffered in this case were far more serious than in the cases cited above. Thus, upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by Counsel for the claimant in the light of the relevant and applicable law regarding damages for personal injuries, I award the claimant **K8,500,000.00** under these heads.

### *Special damages*

The Claimant submits that he expended the sums of MWK3,000.00 and MWK30,000.00 to obtain the Police Report and the Medical Report respectively. These are special damages. According to the established practice, special damages must be strictly proved. The claimant tendered a General Receipt proving that he indeed incurred the K30,000.00 for the Medical Report. The court takes note that the Police Report which he tendered carries an endorsement that it was paid for and indicates that a receipt was issued. I therefore award **K33,000.00** for the Police Report and Medical Report.

### *CONCLUSION*

In total, the claimant is awarded **K8,533,000.00** as damages in this case. The claimant is further awarded costs for the assessment of damages proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 19<sup>th</sup> DAY OF JULY 2021

  
**WYSON CHAMDIMBA NKHATA**

ASSISTANT REGISTRAR