



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

Civil Cause Number 1203B of 2015

**BETWEEN:**

**HOLMAN CHIGWENEMBE.....CLAIMANT**

**AND**

**MUSLIM FUTURE HORIZON ASSOCIATION.....DEFENDANT**

**CORAM: C MANDALA: ASSISTANT REGISTRAR**

Mkandawire: Counsel for Claimant of Chidothe, Chidothe & Company

Defendant: Unrepresented

C Zude: Court Clerk

**ASSESSMENT OF DAMAGES**

**CM MANDALA, AR:**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a Judgment in Default issued on 27<sup>th</sup> July 2017. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, the sum of K6,500 for police and medical reports and costs of the action. The hearing on Assessment of Damages was conducted on 3<sup>rd</sup> November 2020.

This matter arose on 25<sup>th</sup> February 2014 when the Defendant's agent hit the Claimant with a motorcycle on the Lakeshore (M5) road.

**EVIDENCE**

The Claimant was his own and only witness. The Claimants evidence was unopposed. He adopted his witness statement as his evidence in chief. It states:

*I, Holman Chigwenembe, of PO Box 14, Chipoka, make this statement and say as follows:*

- 1. I am a Malawian National of full age and was, at all material times, a road traffic officer.*
- 2. The Defendant was at all material times, the registered owner of the motorcycle registration number DZ 4432 Senke.*
- 3. On or about the 25<sup>th</sup> February 2018, I was on duty on the Lakeshore (M5) road when I stopped a motor vehicle registration number BS 96 Mitsubishi Canter to the extreme left dirty verge of the road to check its particulars. I stood next to the said motor vehicle.*
- 4. Suddenly, the said motorcycle which was travelling at a very high speed hit the said stationary vehicle from behind making the stationary vehicle to move and hit me.*
- 5. I verily believe the accident herein was caused by the negligence of the Defendant's driver.*

6. *Due to the impact, I sustained blunt trauma on the right forearm, bruises/lacerations on the abdomen and right knee sprain. The degree of permanent incapacity was assessed at 14%. There is now shown to me and produced to me a copy of medical report marked as “HC 1”.*
7. *During the recuperation period, I was not able to do the following:*
  - a. *Going to work for two days*
  - b. *Walking long distances*
  - c. *Performing manual work*

#### SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant’s injury and the devaluation of the Kwacha would attract a total award of K3,306,500.00 as compensation. Counsel for the Claimant cited the following comparable awards in support:

- ***Wonderson Mbete v Mr Steven Adam and Prime Insurance Company*** – Civil Cause Number 178 of 2011 where the Claimant was awarded K2,000,000.00 for pain and suffering, and K900,000.00 for disfigurement on 20<sup>th</sup> January 2013. The Claimant sustained a deep cut wound on the thigh and the left side of the head, bruises on the right foot and eye as well as a cut on the right eye.
- ***Dinala Magola v G4S Security Company Limited*** – Civil Cause Number 431 of 2012 where the Claimant was awarded K1,500,000.00 for pain and suffering, and K1,500,000.00 for loss of amenities of life in 2013. The Claimant sustained a deep cut wound on the face and multiple bruises on the head.
- ***Alice Kachis and another v United General Insurance Company Limited*** – Personal Injury Cause Number 87 of 2017 where the Claimant was awarded K1,000,000.00 for pain and suffering, and K1,000,000.00 for loss of amenities of life on 14<sup>th</sup> July 2017. The 2<sup>nd</sup> Claimant sustained multiple bruises and mild head injury.

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#### ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant’s pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.<sup>1</sup>

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.<sup>2</sup> Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and considering the money value. Lord Morris buttresses this contention in ***West v Shepherd***<sup>3</sup> by stating: ‘*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*’

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award

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<sup>1</sup> See ***Cassel and Co v Broom*** [1972] AC 1027. See also ***Tembo v City of Blantyre and The National Insurance Co Ltd*** – Civil Cause No. 1355 of 1994 (unreported).

<sup>2</sup> ***British Commission v Gourley*** (1956) AC 185.

<sup>3</sup> ***West v Shepherd*** (1964) AC 326 at 346.

that is equal with the value of the currency at the time the award is made. In ***Malamulo Hospital (The Registered Trustees) v Mangani***<sup>4</sup>, the Supreme Court states: “It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.” In ***Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu***,<sup>5</sup> the Court states: “Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.” In ***Steve Kasambwe v SRK Consulting (BT) Limited*** Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.’

### COMPENSATION

#### *Pain and Suffering*

The word ‘pain’ connotes that which is at once felt upon the nerves and brain, be it related to the accident or resulting from medical treatment needed by the accident while ‘suffering’ includes fright, fear of future disability, humiliation, embarrassment, and sickness. See: ***Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents*** (Butterworths, 1985) 8 and ***City of Blantyre v Sagawa*** [1993] 16 (1) MLR 67 (SCA).

The Claimant herein sustained ‘blunt trauma right forearm, bruising and laceration on abdomen, and right knee sprain’ as per the medical report. The immediate treatment he received was ‘iodine dressing, cold compress right knee, TTV 0.5ml in stat, and indomethacin 25mg.’ The medical report described the Claimant’s pain as follows: ‘pain results from the swelling and immediate changes in tissue perfusion.’ The medical report further states that the Claimant may have chronic joint pain.

Counsel for the Claimant cited comparable awards of K2,000,000.00, K1,500,000.00 and K1,000,000.00 for pain and suffering awarded in 2013 See: ***Wonderson Mbeta v Mr Steven Adam and Prime Insurance Company, Dinala Magola v G4S Security Company Limited and Alice Kachis and another v United General Insurance Company Limited*** (cited above).

Based on these awards, **this court awards the sum of K1,500,000.00 as damages for pain and suffering.**

#### *Loss of Amenities of Life*

The expression ‘loss of amenities of life’ simply means loss of faculties of pleasures of life resulting from one’s injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: ***Poh Choo v Camden and Islington Area Health Authority*** [1979] 2 All ER 910 and ***City of Blantyre v Sagawa*** [1993] 16(1) MLR 67 (SCA) at 72.

As a result of this incident, the Claimant’s right knee may experience chronic joint pain. The medical report further states that the ‘intermittent knee pain may limit functions like squatting or sport.’

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<sup>4</sup> [1996] MLR 486.

<sup>5</sup> Quoting from ***HQ Chidule v Medi MSCA*** 12 of 1993.

Counsel for the Claimant cited comparable awards of K1,500,000.00 and K1,000,000.00 for pain and suffering awarded in 2013 See: *Dinala Magola v G4S Security Company Limited and Alice Kachis and another v United General Insurance Company Limited* (cited above).

Not much information was provided on how the Claimant is currently feeling. It has been over six years since the accident occurred and the court would have been better guided had the Claimant shed light on what amenities he has lost. Nonetheless, the Claimant is still entitled to an award of damages and the medical report made some predictions on the possible effects of his injuries. Based on the foregoing discussion, **this court awards the sum of K500,000.00 as damages for loss of amenities of life.**

#### *Disfigurement*

Although the Claimant has made submissions on disfigurement, the Judgment does not award the Claimant damages for disfigurement. The judgment lists damages for pain and suffering, damages for loss of amenities of life, the sum of K6,500 for police and medical reports and costs of the action, to be awarded. Considering this, the court will not make an award for disfigurement.

#### *Special Damages*

Special damages, are such as the law will not infer from the nature of the case - *Stros Bucks Aktie Bolag v Hutchinson* (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036. A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516.

The Claimant herein was awarded the sum of K6,500 being the cost of medical and police reports. No evidence was provided to the court to prove that this amount was indeed spent. Though specifically claimed, special damages were not proved during trial and/or submissions. No award will be made under this head.

#### DISPOSAL

The Claimant is therefore awarded K1,500,000.00 for pain and suffering; and K500,000.00 for loss of amenities of life; and costs of the action (to be taxed by the court). **The Claimant's total award is K2,000,000.00 (two million kwacha).**

Leave to appeal is granted. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 22<sup>nd</sup> day of January 2021 at the High Court, Lilongwe.



C Mandala

**ASSISTANT REGISTRAR**