



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
Civil Cause Number 756 of 2018**

BETWEEN:

**LUKA PAULO.....CLAIMANT
AND
KINGSLEY MULEKANO.....1ST DEFENDANT
UNITED GENERAL INSURANCE COMPANY LIMITED.....2ND DEFENDANT**

CORAM:	C MANDALA:	ASSISTANT REGISTRAR
	Kambalame:	Counsel for Claimant of Silungwe Law Consultants
	Semphani:	Counsel for Defendant of Kainja & Dzonzi
	Matope:	Court Clerk

ASSESSMENT OF DAMAGES

CM MANDALA, AR:

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to an Agreed Order on Liability entered on 19th February 2020. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, damages for loss of earnings and earning capacity, K6,000 damages for the costs of medical and police reports, and costs of the action. The hearing on Assessment of Damages was conducted on 20th January 2021.

This matter arose from a road accident that occurred on 30th June 2017 when the 1st Defendant was riding his motorcycle along the Mangochi Liwonde road. The 1st Defendant lost control of the motorcycle and hit the Claimant who was cycling whilst carrying a pillion passenger.

EVIDENCE

Claimant's Evidence

The Claimant adopted their witness statement as evidence in chief. The witness statement states:

6. *I am Luka Paulo of Maulidi village, Traditional Authority Chikowi, Zomba.*
7. *I am 28 years old.*
8. *I am the Claimant in this action.*
9. *All the statements I make are within my knowledge.*
10. *On or around 7th March, 2018 at about 19:15 hours the 1st defendant was riding motor cycle Yamaha AG 200 registration number MHG 1765 from the direction of Mangochi turn-off going towards Liwonde. I was riding my bicycle at the far-left dirt verge of the road with a pillion passenger going the same direction. Upon arrival at Ferry School, the rider of the motorcycle over-spiced and swerved to the near dirt verge of the road where he hit me.*

11. For further details of the accident, I refer to a copy of the police report that I obtained marked "LP 1."
12. As a result of the accident, I sustained mild head injury, soft tissue injuries to the left leg and right shoulder.
13. I was hospitalized at Machinga District Hospital for a month. Thereafter, I was treated as an outpatient for three months.
14. My shoulder was wrapped with a bandage for a month.
15. I was being massaged with a cloth soaked in hot water by my wife every day for month.
16. I still feel pain on my shoulder whenever I try to work in the garden.
17. I still feel pain on my left leg whenever I walk for a long distance.
18. I am a businessperson. I run a bicycle taxi business. I used to make around MK 3,000.00 – MK5,000.00 a day before the accident. I now only make around MK1,000.00 – MK1,500.00 a day because the shoulder and leg gets painful so I work up to around 07:00 hours in the morning.
19. My permanent incapacity was assessed at 25%.
20. For further details of the injuries I suffered, I refer to a copy of the medical report that I obtained marked "LP 2."
21. I believe that the facts stated in this witness statement are true.

In viva voce, Mr Paulo confirmed that his witness statement stated that he was in hospital for one month while the medical report documents 10 days in hospital. Mr Paulo further confirmed that he has difficulties riding a bike despite paragraph 17 of the medical report that states that the affected limb will function normally as before. The Claimant confirmed paragraph 18 of the Witness Statement. He added that he charges at least K200 per trip. If he carries 15 people on a particular day, he can make up to K5,000 per day although this is dependent upon the lengths of the trips. At the moment he makes between K1,000.00 and K3,000.00 a day.

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 K22,998,022.84 as compensation. Counsel for the Claimant cited the following comparable awards in support:

- ***Albert Kambova v Shadreck Shombe & Prime Insurance Company Limited*** – Personal Injury Cause Number 99 of 2016 where the Claimant sustained bruises and wounds on the left arm, right elbow, both knees and on the head. On 23rd July 2018, the Claimant was awarded K1,900,000.00 for pain and suffering, K950,000.00 for disfigurement and K450,000.00 for loss of amenities of life. multiple fractures and a cut wound on the head.
- ***White Makwinja v Charter Insurance Company Limited*** – Personal Injury Cause Number 207 of 2015 where the Claimant sustained a deep cut wound on the right frontal head, a cut above the right eye, bruise on the finger, buttocks and right shoulder. On 21st December 2018, the Claimant was awarded a total sum of K3,950,000.00
- ***Blessings Kwalenga v Michael Chirambo and Reunion Insurance Company Limited*** – Personal Injury Cause Number 432 of 2018 where the Claimant sustained a deep cut wound on the head, swollen left hand, painful chest, and general body pains. On 10th December 2018, the Claimant was awarded K1,950,000.00 for pain and suffering, K1,200,000.00 for loss of amenities of life, and K8000,000.00 for disfigurement.

SUBMISSIONS BY COUNSEL FOR THE DEFENDANT

Counsel for the Defendant filed written submissions. Counsel avers that the extremity of the Claimant's injury would attract a total award of K1,500,000.00 as compensation. Counsel for the Defendant cited the following comparable awards in support:

- ***Yusuf Matemba v Fred Sumani & prime Insurance Company Limited*** – Personal Injury Cause Number 523 of 2014 where the Claimant sustained a painful right leg, painful right hand, swollen frontal head, sprained left shoulder joint and multiple bruises in the head. On 3rd August 2018, the Claimant was awarded a global sum of K998,000.00 as compensation.

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.¹

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in ***West v Shepherd***³ 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 that is commensurate with the value of the currency at the time the award is made. In ***Malamulo Hospital (The Registered Trustees) v Mangani***⁴, 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***,⁵ 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: ‘*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. 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

The Claimant sustained mild head injuries, soft tissue injuries to the left shoulder and right leg.

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

¹ 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).

² ***British Commission v Gourley*** (1956) AC 185.

³ ***West v Shepherd*** (1964) AC 326 at 346.

⁴ [1996] MLR 486.

⁵ Quoting from ***HQ Chidule v Medi*** MSCA 12 of 1993.

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 a ‘mild head injuries, soft tissue injuries to the left shoulder and right leg’ as per the medical report. He was admitted from 7th March 2018 to 17th March 2018. He did not undergo any surgical operations and the medical report does not state what treatment he received for his injuries.

Counsel for the Claimant cited comparable awards of K1,900,000.00, and K1,950,000.00 for pain and suffering made in 2018. See: *Albert Kambova v Shadreck Shombe & Prime Insurance Company Limited, and Blessings Kwalenga v Michael Chirambo and Reunion Insurance Company Limited* (cited above).

Based on this, this court awards the sum of K2,000,000.00 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.

To date, the Claimant experiences pain in his shoulder when he works in the garden and pain in the left leg when he walks long distances.

Counsel for the Claimant cited comparable awards of K450,000.00, and K1,200,000.00 for loss of amenities of life made in 2018. See: *Albert Kambova v Shadreck Shombe & Prime Insurance Company Limited, and Blessings Kwalenga v Michael Chirambo and Reunion Insurance Company Limited* (cited above).

Based on the foregoing discussion, this court awards the sum of K800,000.00 as damages for loss of amenities of life.

Disfigurement

In the matter of *James Chaika v NICO General Insurance Co Ltd* the High Court stated that ‘Disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with.’ In *Nyirenda v Moyo and other*, the claimant was awarded the sum of K500,000.00 as damages for disfigurement in 2018.

Following the sentiments made in the *James Chaika Case*, the Claimant is hereby awarded K500,000.00 as damages for disfigurement.

Damages for Loss of Earnings and Earning Capacity

Counsel for the Claimant submits that the Claimant ought to be awarded loss of earnings as the total loss or actual reduction in the income of the Claimant because of the injury suffered, and loss of earning capacity that is the prospective loss or reduction in income as a result of the injury suffered. Counsel proposes the use of the multiplicand and multiplier formula as is used in claims for loss of dependency. Counsel, based on his computations, proposes a total award of K4,998,022.00.

Unfortunately, Counsel bases his computations on sums that have not been proven to the court. The Claimant stated in viva voce that he made between K1,000.00 and K5,000.00 per day from the bicycle taxi business. Unfortunately, no documentation is provided to show this. This being an unliquidated claim, it ought to have been specifically proved, but this does not disentitle the Claimant from damages – see *Jumbe Jere v Moses*

Blessings & Prime Insurance Company Limited – Civil Cause Number 785 of 2019. The Court will therefore award the sum of K100,000.00 as damages for loss of earnings and earning capacity.

Special Damages

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - *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.

Special damages must be specifically pleaded and must also be proved - *Govati v Manica Freight Services (Mal) Limited* [1993] 16(2) MLR 521 (HC). 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 do not meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516.

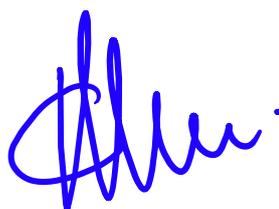
The Claimant here was awarded special damages for costs of obtaining medical and police reports. No evidence was provided to the court to support this award. Special damages ought to be specifically claimed and proved. Though the Claimant specifically claimed special damages, they were not proved during trial and/or submissions. For these reasons, no award will be made under this head.

DISPOSAL

The Claimant is therefore awarded K2,000,000.00 for pain and suffering; K800,000.00 for loss of amenities of life; K500,000.00 for disfigurement, K100,000.00 as damages for loss of earning capacity, K0 as special damages and costs of the action (to be taxed by the court). **The Claimant's total award is therefore K3,400,000.00 (three million four hundred thousand kwacha).**

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

Ordered in Chambers on the 4th day of March 2021 at the High Court, Lilongwe.



C Mandala

ASSISTANT REGISTRAR