



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

Civil Cause Number 460 of 2020

BETWEEN:

CHRISTOPHER KACHEMBA.....CLAIMANT

AND

STUART MTAMBO.....1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2ND DEFENDANT

CORAM:	C MANDALA:	ASSISTANT REGISTRAR
	Hassan:	Counsel for Claimant of Khonyongwa & Associates
	Defendants:	Absent (Unrepresented)
	Matope:	Court Clerk

ASSESSMENT OF DAMAGES

CM MANDALA, AR:

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Default Judgment entered on 21st August 2020. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, costs of police and medical reports, and costs of the action. The hearing on Assessment of Damages was conducted on 21st January 2021.

This matter arose from a road accident that occurred on 1st April 2020 when the 1st Defendant was driving a vehicle along the Kasiya road. At/around Mwenera road junction when the 1st Defendant turned right and collided with the Claimant who was coming from the opposite direction.

EVIDENCE

Claimant's Evidence

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

1. *That the particulars appearing above are mine.*
2. *That I reside at Mbachandu village, Traditional Authority Zulu, Mchinji.*
3. *That matters stated herein are based on facts that are personally known to me and I believe the same to be true to the best of my knowledge and belief.*
4. *I am the Claimant in this matter.*
5. *I make this statement in respect of an accident that occurred on the 1st day of April 2020 involving myself and the 2nd Defendant's insured motor vehicle registration number DA 9941 Tata 2 tonner. The accident occurred at Mwenera junction along Kasiya road.*
6. *On the said day, I was riding my motorcycle going the opposite direction of the above said motor vehicle.*

7. Upon arrival at Mwenera road junction, the first Defendant started turning to the rights without checking whilst in the process he collided with me.
8. The accident occurred because the 1st Defendant did not stop to look or to give way to other road users.
9. After the accident, two policemen came at the scene of the accident where they removed an insurance disk from the windscreen of the 2nd Defendants insured motor vehicle and showed me the same. I noted and recorded that the said vehicle insured by the 2nd Defendant herein under certificate number 131735426 valid from 01/09/2019 to 31/08/2020. The said police officers returned with the said insurance disk. A police report was issued for the accident. I exhibit the same herein marked **CK 1**.
10. I have noted that the insurance details as I quoted above are the same dates as those indicated on the police report.
11. As a result of the accident. I suffered the following injuries:
 - a. Multiple fractures on both legs
 - b. Cut on the chin and face
12. I was attended to and treated at Kamuzu Central Hospital. A Medical report was issued at the said Kamuzu Central Hospital in respect of the injuries and treatment which I received. I exhibit the same marked **CK2**.
13. As a result of the said injuries. I suffered the following loss and damage
 - a. Excessive pain and suffering
 - b. 25% permanent incapacity
 - c. Had to undergo and endure debridement, iodine dressing and suturing of the wounds
14. I took the present proceedings against the defendants in order to be awarded damages for the injuries, loss and damage I suffered due to the said road accident.
15. I do make the foregoing statement knowing and believing the same to be true and knowing that if I state in it anything that I know to be false. I shall be amenable to prosecution.
16. I do not speak or understand English. This statement was recorded in English with the translation of my lawyer, **Mr Issah Mustapha Hassan**, and I believe that in English translation reflects what I informed him in Chichewa during the said recording.

In viva voce, the Claimant told the court that his left leg, specifically the thigh bone broke in two places, while the right leg broke in one place. The Claimant also had scratches and one of his fingers was injured. The Claimant underwent a surgical procedure at Kamuzu Central Hospital and was also treated at Beit Cure. At the time of trial, the Claimant was feeling better. He cannot walk long distances and had to use a bicycle. When the Claimant walks long distances, the left leg becomes very painful.

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 K6, 500, 000.00 as compensation. Counsel for the Claimant cited the following comparable awards in support:

- **Luciano Chipapi v Jimmy Napulu & Prime Insurance Company Limited**– Personal Injury Cause Number 117 of 2014 where the Claimant sustained a fractured left shoulder, fractured ribs, dislocated arm, painful leg, soft tissue injuries, and loss of memory. The Claimant was awarded K3,213,500.00 for pain and suffering and loss of amenities of life, and disfigurement.
- **Virginia Makiyi v Tawina Chatchuka & Reunion Insurance Company Limited** – Personal Injury Cause Number 392 of 2015 where the Claimant sustained a a fractured left tibia and fibula and

multiple bruises on the chest. On 6th May 2016, the Claimant was awarded a total sum of K5,000,000.00

- **Annie Kutama (through Dorothy Kutama her mother and next friend) v Godfrey Million and Prime Insurance Company Limited** – Civil Cause Number 920 of 2010 where the Claimant sustained a fractured left femur, mild head injury with cut wound on the forehead, bruises on the arms and shortening of the leg. On 23rd October 2015, the Claimant was awarded K4,950,000.00 for pain and suffering, loss of amenities of life, and disfigurement.
- **Chimwemwe Lomani (Minor, suing through Lomani Chingeni, next friend) v Mathews Gama and Prime Insurance Company Limited** – Civil Cause Number 2301 of 2015 where the Claimant sustained multiple bruises on the knees, multiple bruises on the elbows, and painful right foot. On 13th October 2015, the Claimant was awarded K1,900,000.00 for pain and suffering, loss of amenities of life, and disfigurement.
- **Austin Julius v Rasika Gunawerdana & General Alliance Insurance Limited** – Personal Injury Cause Number 316 of 2014 where the court awarded K700,000 for disfigurement.

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

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.

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 fractures on both legs and cuts on the chin and face. The Claimant was admitted from 1st April 2020 to 19th May 2020.

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. 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 sustained fractures on both legs and cuts on the chin and face. The Claimant underwent debridement, iodine dressings, and internal fixation. The medical report states that the Claimant underwent severe pain. Looking at previous awards as cited by Counsel and the Claimant's injuries, 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.

The Claimant has difficulties walking and can only perform manual work with limitations. Looking at previous awards as cited by Counsel and the Claimant's injuries, this court awards the sum of K1,500,000.00 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. In the matter of *Austin Julius v Rasika Gunawerdana & General Alliance Insurance Limited* – Personal Injury Cause Number 316 of 2014 the court awarded the Claimant K700,000 for disfigurement.

Following the sentiments above, the Claimant is hereby awarded K650,000.00 as damages for disfigurement.

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; K1,500,000.00 for loss of amenities of life; K650,000.00 for disfigurement, K0 as special damages and costs of the action (to be taxed by the court). **The Claimant's total award is therefore K4,150,000.00 (four million one hundred and fifty 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