



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

Civil Cause Number 786 of 2018

BETWEEN:

**ALINAFE MASINA.....CLAIMANT
AND**

PRIME INSURANCE COMPANY LIMITED.....DEFENDANT

CORAM:

C MANDALA:

ASSISTANT REGISTRAR

C Sikwese:

Counsel for Claimant of Sikwese & Company

Wilkinson & Associates:

Absent

C Zude:

Court Clerk

ASSESSMENT OF DAMAGES

CM MANDALA, AR:

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Summary Judgment pronounced on 14th October 2019 by Hon Justice MCC Mkandawire (as he then was). The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, special damages in the sum of K3,000.00, and costs of the action. The hearing on Assessment of Damages was conducted on 7th April 2021.

This matter arose from a road accident that occurred on 11th July 2017 when the Claimant boarded a vehicle that was hit by another vehicle being driven by the Defendant's insured as it was being driven along the Lilongwe-Kasungu road.

EVIDENCE

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

7. ***That** I am the Claimant in this matter. I come from Kambwiritawa village, T/A Kambwiri in Salima district.*
8. *That I was a victim of the road accident involving motor vehicle Reg no. NB 2171 Toyota Corolla.*
9. *That the 1st Defendant was at all material times the owner of motor vehicle Reg no. NB 2171 Toyota Corolla.*
10. *That the 2nd Defendant was at all material times the insurer of the said motor vehicle Reg. No NB 2171 Toyota Corolla.*
11. ***That** on or about 11th July 2017 at about 19:30 hrs, I boarded motor vehicle registration no. NB 2171 Toyota Corolla which was driven from the direction of Lilongwe heading to Lumbadzi. Upon arrival at Central Poultry along Lilongwe-Kasungu road, the driver of motor vehicle Reg No. NB 2171 Toyota*

Corolla Mr Kennedy Zimbiri was overtaking the motorcycle and in the process, he collided with motor vehicle no. MG 811 AD GWM Hover which was coming from the opposite direction.

12. **THAT** due to the impact of the accident, I sustained a fracture on left leg. I herewith exhibit the copy of medical and police report marked “**Ama & b**”
13. **THAT** through my lawyers, I instituted legal proceedings against the Defendants by the Writ issued on 5th April 2018.
14. I therefore pray that the Defendants be condemned to pay damages for pain and suffering, damages for loss of use of amenities of life, special damages MK3,000 for police and medical report and costs of this action.
15. I further pray that the Defendants be condemned to pay costs of this action.

In viva voce, the Claimant confirmed that they were injured on the forehead. The court saw the visible scar on the forehead. The Claimant injured their eye, broke their ribs and leg. They confirmed that they were seeking compensation from the court for the injuries.

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*

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.

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.'

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 loss and the devaluation of the Kwacha would attract awards totalling K700,000.00 for pain and suffering, K2,000,000.00 as damages for loss of amenities of life, and K3000.00 as special damages. Counsel cited the following comparable awards to support their argument:

- ***Joseph Danger v Prime Insurance Company Limited*** Civil Cause Number 1760 of 2010 where the Claimant was awarded K6,500,000.00 for a fracture of the leg, deep cut wound on the knee, painful leg, bruises on both arms and the back, and a cut wound on the forehead. The award was made on 1st April 2013.
- ***Felista Macheso v Peter Kondowe, Blue Bird Motel & NICO General Insurance Company Limited*** Personal Injury Cause Number 551 of 2016 where the Claimant was awarded K5,600,000.00 as damages for a closed fracture of the right humerus, and an open fracture of the right lower leg near the ankle. The award was made on 16th October 2009.
- ***Yobe v Prime Insurance Company Limited*** Personal Injury Cause Number 389 of 2011 where the Claimant was awarded K7,000,000.00 as damages for a cut wound on the knee, and multiple soft tissue injuries. The award was made on 8th July 2013.
- ***Frank Vashco v Farrok Haquina & Olympic Bakery*** Personal Injury Cause Number 1043 of 2015 where the Claimant was awarded K4,100,000.00 for facial abrasions, cuts on the right palm, and on the head. The award was made on 10th March 2016.

COMPENSATION

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 herein sustained '*multiple fractures with multiple cuts,*' more specifically '*fracture tibia/fibula, fracture ribs, cut on periorbital*' as per the medical report. The medical report further states that the Claimant received the following treatment: '*x-ray, debridement, iodine...POP three times, arm-sling*'. The Claimant was hospitalized for two weeks, used crutches for six weeks, and was in a POP for about nine months. The Claimant underwent several procedures, the x-ray, and POP application three times.

The court had recourse to comparable awards cited by Counsel of K6,500,000.00 and K5,600,000.00, K700,000.00, and K4,100,000.00 – these were awards made in 2013, 2009, 2013, and 2016, respectively. See: ***Joseph Danger v Prime Insurance Company Limited, Felista Macheso v Peter Kondowe, Blue Bird Motel & NICO General Insurance Company Limited, Yobe v Prime Insurance Company Limited, and Frank Vashco v Farrok Haquina & Olympic Bakery*** (cited above).

Based on this, this court awards the sum of K3,000,000.00 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.

As a result of the accident, the Claimant was hospitalized for two weeks, used crutches for six weeks, and was in a POP for about nine months. The Claimant underwent several procedures, the x-ray, and POP application three times. The court had recourse to comparable awards cited by Counsel of K6,500,000.00 and K5,600,000.00, K700,000.00, and K4,100,000.00 – these were awards made in 2013, 2009, 2013, and 2016, respectively. See: *Joseph Danger v Prime Insurance Company Limited*, *Felista Macheso v Peter Kondowe*, *Blue Bird Motel & NICO General Insurance Company Limited*, *Yobe v Prime Insurance Company Limited*, and *Frank Vashco v Farrok Haquina & Olympic Bakery* (cited above).

Based on the foregoing discussion, this court awards the sum of K1,000,000.00 as damages for loss of amenities of life.

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

The Claimant herein was awarded K3000 as special damages being costs of obtaining medical and police reports. 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 K3,000,000.00 for pain and suffering; K1,000,000.00 for loss of amenities of life, and K0 as special damages and costs of the action (to be taxed by the court). **The Claimant's total award is therefore K4,000,000.00 (four million 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 7th day of May 2021 at the High Court, Civil Division, Lilongwe.



C Mandala

ASSISTANT REGISTRAR