



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 856 OF 2021

**Between;**

**PRINCE KWEREPETA.....CLAIMANT**

**-AND-**

**LIBERTAS GENERAL INSURANCE COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**AZIM ANIZ.....2<sup>ND</sup> DEFENDANT**

### **ORDER ON ASSESSMENT OF DAMAGES**

The claimant commenced the present action against the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement, damages for loss of earning capacity, special damages and costs of the action. On 04<sup>th</sup> February 2022, the court entered judgement in favour of the claimant with respect to all the claims.

On 13<sup>th</sup> May 2022, the matter was called for assessment of damages. As it is trite law that a party who alleges a fact must prove the same to a required standard, the claimant proceeded to adopt his witness statement as his evidence. In brief, the claimant's evidence was that he was hit by motor vehicle registration number MN 3045 as he was walking along the road. Due to the impact, he sustained dislocation of the ankle, swollen ankle, bruises on the ankle and general body pain. The ankle was on POP for a period of 6 weeks. As a result, he was experiencing numbness and he was walking with a limp. Finally, he tendered the police report and medical report. When cross-examined, he stated that he is

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aged 18 and is supported by his parents for his livelihood. The witness also stated that he was treated as an outpatient for the dislocated ankle.

This was the evidence that was presented before the court. The defence opted not to call any witness. It is trite that damages for personal injuries are awarded for the plaintiff's both pecuniary and non-pecuniary losses. The non-pecuniary losses include pain and suffering, loss of amenities of life, loss of dependency 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. See; **Cassel and Co v Broom [1972] AC 1027, Tembo v City of Blantyre and The National Insurance Co Ltd civil cause No. 1355 of 1994 (unreported)**.

Damages to be awarded in personal injury claims are categorized into two, thus, general damages and special damages. General damages are injuries that are direct as a result of the alleged misconduct. As for special damages, these are not a direct consequence and ought to be specifically pleaded and proved. The claim for pain and suffering, loss of amenities of life and disfigurement fall within the ambit of general damages.

To begin with damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. See; **Lemon Banda & 19 Others v. Mota Engil Ltd & genral Allicance Insurnace Ltd, Perssonal Injury Cause No. 178 of 2012**. In **City of Blantyre v. Sagawa 1993 MLR 16 (1)**, the court stated that;

*Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like.*

As for loss of amenities of life, this concerns loss of enjoyment of life. So, where it has been proved that a person's ability to participate in certain activities he used to enjoy before the injury has been negatively affected such that he would no longer be able to perform those activities or is able to but with difficulties, it would be concluded that there is loss of amenities of life. See **Lemon Banda case (supra)**

On disfigurement, the court mainly focuses on the change of looks of the claimant as a result of the injuries. The change of appearnace might be due to scars, amputations or any bodily distortion. The court awards this head of damages under pain and suffering. However, where there is a need to undergo suggery to rectify the disfigurement, then the court will make a separate award. See; **Lemon**

**Banda (supra) and Mary Kamwendo v. StageCoach Mlawi Ltd Civil Cause No. 840 of 1995.**

It is pertinent to bear in mind, at this point, that there is no specific mathematical formulae for determining the quantum of damages to be awarded. As such it is a cumbersome task to arrive at an award that speaks fairly to the injuries sustained by a particular claimant. In **Elida Bello v. Prime Insurance Company Ltd Civil Cause No. 177 of 2012**, it was stated that the court strives to award a claimant fairly and adequately.

In applying this principle, the court in **Wonderson Mbeta v. Steve Adam & Prime Insurance Company Limited Civil Cause No. 178 of 2011**, the claimant sustained deep cuts on the thigh, left side of the head, bruises on the right foot and ear, cut on the right eye. He was awarded MK1, 200, 000.00 for pain and suffering, loss of amenities of life and disfigurement. In **Dinala Magola v. G4S Security Services Company Limited Personal Injury Cause No. 431 of 2012**, the claimant sustained a deep cut wound on the face and multiple bruises on the head. He was awarded a total of MK2, 000, 000.00 for pain and suffering, loss of amenities of life and disfigurement.

The cited awards are merely a guide to this court and a tool in demonstrating how courts have dealt with similar or less (even more) severe injuries as the ones under consideration. This court further considered the decisions in **Friday Mtelera v. Nenani Misolo & Prime Insurance Company Limited Personal Injury Cause No. 247 of 2014** in which the court awarded the sum of MK7, 000, 000.00 to the claimant who sustained a fractured femur, right patella and tibia, cuts on the legs, right elbow and bruises. This award was made in 2017. In **Gedion Mhango v. NICO General Insurance Company Limited Personal Injury Cause 703 of 2016**, the court awarded the sum of MK6, 700, 000.00 as damages for a fractured leg and deep cuts on the head and cut wounds on the body.

The claimant through counsel proposes that the court ought to award the sum of Mk4, 000, 000.00 as damages for pain and suffering. The court is called upon to consider the decision in **Florence Kaning'a v. MHC & Esther Mtenje Civil Cause No. 1339 of 2007** in which the claimant sustained severe fracture of the left leg which resulted in amputation and fracture of the left leg. The court awarded the sum of MK9, 000, 000.00. On loss of amenities of life, the claimed proposed the sum of MK2, 500, 000.00 considering the award in **Justin Makwangwala v. Henderson Van Guilder & Others Personal Injury Cause No. 213 of 2015**.

On the hand, the defense submitted that an award of MK2, 000, 000.00 would be adequate compensation on both pain and suffering and loss of amenities of life.

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Counsel relied on the case of **Magret Khumalo v. Prime Insurance Company Limited Civil Cause No. 198 of 2013** where the plaintiff suffered a deep cut wound on the head, dislocation of the backbone and general body pains. The court award the sum of MK2, 000, 000.00 for pain and suffering and loss of amenities.

It has been established that the claimant in the within matter sustained dislocation of the ankle, swollen ankle, bruises on the ankle and general body pain. With this evidence in mind, it is clear that the claimant endured pain and suffering at the point of injury and throughout the treatment period. It is also agreeable that the claimant suffered loss of amenities of life for the reason that he can no longer participate fully in sporting activities as he used to do. However, it would be stretching the facts to say that the claimant has suffered disfigurement or deformity. Dislocation is an internal injury and the claimant has recovered fully, the knee is no longer swollen. He had no visible scars on the areas he sustained bruises and he was walking without any difficulty. All this point to one direction, there is nothing that was presented in evidence that support a claim for disfigurement and or deformity. It is therefore the court's finding the circumstances of the present case do not warrant an award of damages for disfigurement.

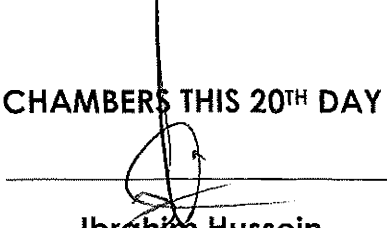
The claimant also brought a claim for loss of earning capacity. The evidence did not reveal that the claimant was employed before the accident and or that he was pursuing some economic activities such that due to the injuries, he lost some earnings or that he will not be able to earn as he used to. In short, the claim for loss of earning capacity has not been substantiated to a required standard.

Conclusively, this court, having considered the circumstances unique to the present case and the awards made in the cited cases, it is its most considered view that the sum of MK2, 500, 000.00 proper for pain and suffering. The claimant is also awarded the sum of MK1, 000, 000.00 for loss of amenities of life.

Total award is therefore MK3, 500, 000.00

Costs are for the claimant to be assessed if not mutually agreed by the parties.

**DELIVERED IN CHAMBERS THIS 20<sup>TH</sup> DAY OF JULY, 2022**

  
Ibrahim Hussein

**ASSISTANT REGISTRAR**

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