



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 407 OF 2020
BETWEEN**

DIANA CHIWALO.....CLAIMANT

AND

ULEMU BUS SERVICE.....1ST DEFENDANT

PRIME INSURANCE COMPANY.....2ND DEFENDANT

CORAM: Msokera, Assistant Registrar
Chilumpha, of counsel for the Claimant
Defendants, absent
Mbekeyani, Clerk/Official Court Interpreter

ORDER ON ASSESMENT OF DAMAGES

1. This matter is before this court for assessment of damages, the claimant having obtained judgment on liability against the defendants for damages on pain and suffering, loss of amenities of life, loss of forearm, and disfigurement on 21 September 2020. On the onset, notwithstanding the wording of the default judgment, I must state that there is nothing like loss of forearm as an independent head of damages. It is part and parcel of pain and suffering and may also be considered as constituting disfigurement or deformity.
2. The claimant was, on 14 March 2019, a passenger in a bus (registration number BT 5070) belonging to the 1st defendant with a trailer (registration number BT 9235) which was travelling from South

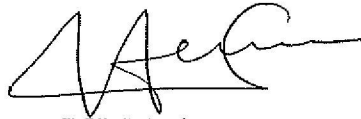
Africa to Malawi via Zimbabwe. Upon arrival at Nyamapanda in Zimbabwe, the bus way-warded and transposed as the driver was trying to avoid hitting children who were crossing the road.

3. Damages for pain and suffering attend to generally any personal injury whilst those for loss of amenities cover the loss caused by the injury in that the claimant will be unable to pursue the leisure and pleasure of life that she used to enjoy - see *Mtika v US Chagomerana t/a Trans Usher (Zebra Transport)* [1997] 2MLR 123. It is essential, however, to note that disfigurement is treated under the head of pain and suffering unless there is special need to handle it separately - see *Mwasinga v Stagecoach (Mal) Ltd* [1993] 16 (1) MLR 363.
4. As to how much compensation is adequate, counsel for the claimant seems to be confused. In the skeleton arguments he submitted that K8 500 000.00 suffices. Yet, later he filed submissions in which he proposes the sum of K9 000 000.00. Strange as this may be, the discretion and authority to assess damages remain with the court.
5. Since this is a civil proceeding and as such the burden of proof rests upon a party who asserts the affirmative of an issue – see *Isaac Chiwale (suing as administrator of the estate of Lazalo Chiwale) v Real Insurance Company Limited* [2012] MLR 195 (HC) – the onus is on the claimant to show whether there is evidence justifying the proposed value of compensation.
6. In the statement of claim, the claimant talks of sustaining multiple fractures, scars on the head and the left hand, going through a surgery, and losing the forearm. In her witness statement, she described her injuries in one paragraph as follows:

'I suffered severe injuries following the accident to the extent that I went through a surgery where I lost my forearm with enormous pain. I was assessed 70% as the degree of permanent incapacity. Attached is the medical report marked "DC2".'
7. Without having recourse to the medical report of which contents are caught up by the rule against hearsay evidence as the report has been tendered by the claimant herself, I am satisfied that the *viva-voce* testimony including the witness statement sufficiently proves that the claimant at least sustained a fracture which resulted in her losing her forearm and going through multiple medical procedures. Anything more than this has not been proved.
8. I am alive to the basic principle of fairness that comparable injuries should be compensated with comparable awards - *Malamulo Hospital (The Registered Trustees) v Mangani* [1996] MLR 486 (SCA). The comparability of cases must be both in time and injuries involved.

9. I have taken note of the decided cases which counsel has referred to me but I find them of little assistance as they are either too old or involve injuries unlike those of the claimant. Going through the decisions of my brothers and sisters, I find the award in *Makwangwala v Van Guilder and others* Personal Injury Case No. 213/2015 [2017] MWHIC 38 a good guide. Among others, the injuries in that case included amputation of the leg. The court made an award of K5 000 000.00 for pain and suffering, K3 000 000.00 for loss of amenities of life, K1 000 000.00 for disfigurement. This award was made in February 2017.
10. On the foregoing, I find that the amounts proposed by the claimant as aggregate compensation are within the range of awards for the injuries that she sustained. Therefore, I proceed to award her the sum of K9 000 000.00 (Nine Million Kwacha Only) as aggregate compensation, thus, covering all the heads of damages.
11. The defendants will bear the costs of this proceeding which shall be assessed if not agreed by the parties.

Made this 1st day of August 2022 at Blantyre.



C.H. Msokera

ASSISTANT REGISTRAR
