



MEDSON BATON **CLAIMANT**
AND
DEO MAKUBI **1ST DEFENDANT**
PRIME INSURANCE
COMPANY LIMITED **2ND DEFENDANT**

ORDER ON ASSESSMENT OF DAMAGES

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6. After the accident he was taken to the hospital where he was subjected to painful medical procedures and the leg was cast in a plaster of Paris. He was admitted for 2 weeks. He tendered a police report and a health passport book page.
7. According to him before the accident he enjoyed robust health and he never had healthy complaints in his life. He would walk without limping and could perform normal duties as a security guard. He could walk long distances without problems. He used to have sex as he had libido.
8. After the accident he does not enjoy good health as before. He walks with a limp, he can no longer work as a security guard, cannot walk long distance and has lost libido. He is now apprehensive of the future as he is aware that he will live with the effects of the injuries for a long time.
9. His physical capacity has reduced by 30%, he has been deformed in that he now has a scar and his leg has been shortened by 2 centimetres. For the purposes of these proceedings he procured a police and a medical report the cost of which totaled to K28,000.00.
10. The defendants did not call any witnesses. Counsel advised this court that he would just file submissions. The submissions have not been filed. I therefore decided to proceed to make my order on assessment without those submissions.
11. A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. The principle is that the Court must, as nearly as possible, award an amount, as far as money can, which will put the plaintiff in the same position s/he would have been in if s/he had not sustained the wrong for which s/he is being compensated.
12. Such damages are recoverable for both pecuniary and non-pecuniary losses. The pecuniary losses include

loss of earning capacity and related benefits and medical expenses and related expenses.

13. In this case we are to assess non pecuniary damages for pain and suffering, loss of amenities of life and disfigurement or deformation as the claimant puts it.
14. Pain refers to the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering is distress which is not felt as being directly connected with any bodily condition.
15. Loss of amenities of life concentrates on the curtailment of the plaintiff's enjoyment of life by his/her inability to pursue the activities s/he pursued before the injury. Bricket L.J. put it thus in *Manley v. Rugby Portland Cement Co. (1951) C.A. No 286*, reported at Kemp and Kemp, *The Quantum of Damages*, Vol. 1 (2nd Ed., 1961, p. 624)

"There is a head of damage which is sometimes called loss of amenities; the man made blind by the accident will no longer be able to see the familiar things he has seen all his life; the man who has had both legs removed will never again go upon his walking excursions- things of that kind-loss of amenities."

16. Disfigurement refers to the change in physical form of a person injured either as a direct result of the injury such as scars that remain after the wound heals, or its treatment, such as scars coming in as a result of surgical operation necessitated by the injury. Again the amount awardable here cannot be scientifically quantifiable.
17. The amount to be awarded for these heads of damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature. See *Wright v British Railway Board [1983] 2 AC 773*.
18. Counsel has cited two cases from which I can get guidance to come up with my award. Of the two the most relevant one is *Elizabeth Khova George v*

Fatchi Hajapi and another (2020) PI Cause number 652. The claimant suffered fracture of the left arm cut on the lip bruises on the left knee. She had injuries to the tibia and fibula of the left leg. The sum of K8,000,000.00 was awarded. Unfortunately, the award has not been broken down to the various heads of damages as it were. It becomes easier if each head has been awarded separately as one then understands why the award came to the cited amount.

19. In the case of *Davie Owen v Prime Insurance* (2015) Personal Injury Cause number 380 the claimant sustained a fracture of the left distal femur and of the right tibia and fibula. An external fixator was applied on the right tibia and fibula. He also had cross K-wires used to fix the left distal femur. He was awarded the sum K5, 500,000.00 on 25th May, 2018.
20. Having taken into consideration the injuries suffered by the claimant herein plus the cases cited and the time lapse between those decisions and the assessment herein, I make the following awards:
 - a. For pain and suffering: K3, 000, 000.00
 - b. For loss of amenities: K2, 000,000.00
 - c. For Disfigurement: K2,000,000.00.00
21. I also the special damages of K28, 000.00
22. The total award therefore comes to K7, 028,000.00
23. I also award costs of these proceedings.

Delivered this 24th day of June 2022



CC Matapa Kacheche
Deputy Registrar