



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 394 OF 2020

BETWEEN

WONDERFUL SOLOMONI (suing through his mother and litigation guardian  
STELLA CHARLES) 1<sup>st</sup> PLAINTIFF  
RUTH SOLOMONI (suing through his mother and litigation guardian  
STELLA CHARLES) 2<sup>nd</sup> PLAINTIFF  
VERONICA SOLOMONI (suing through his mother and litigation guardian  
STELLA CHARLES) 3<sup>rd</sup> PLAINTIFF

AND

DICKSON MALUNGA 1<sup>ST</sup> DEFENDANT  
PRIME INSURANCE COMPANY LIMITED 2<sup>ND</sup> DEFENDANT

CORAM : MATAPA KACHECHE Deputy Registrar  
Kalanda for the Plaintiff  
Sawerengera for the Defendant  
Mtegha (Mrs) Official Interpreter  
ORDER ON ASSESSMENT OF DAMAGES

1. By an order following mediation dated 27<sup>th</sup> October, 2020 the Court entered a judgment against the defendants to pay damages for injuries suffered by the claimants herein. The damages were to be assessed by the Registrar if not agreed by the parties.
2. Apparently the parties failed to agree and the matter was set before me for assessment of damages. This is my order on assessment.
3. The facts leading to liability are not in issue so I will not dwell on them. Instead I will concentrate on the evidence on the injuries suffered.
4. 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.

5. Such damages are recoverable for both pecuniary and non-pecuniary losses. The pecuniary losses include loss of earning capacity and related benefits and medical and other related expenses. In this case we are to assess non pecuniary damages for pain and suffering, loss of amenities and disfigurement and pecuniary damages being the claim for the cost of the medical report and police report.
6. 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.
7. Loss of amenities of life concentrates on the curtailment of the plaintiff's enjoyment of life by their inability to pursue the activities they 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 (2<sup>nd</sup> 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."*

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8. The amount to be awarded for this head 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*.
9. 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.

10. I am grateful to counsel for both sides for doing a good research to come up with previous awards. Numerous orders have been cited but I do not intend to refer individually to them. I will have them in mind though as I come up with my final award.

11. Let me now revert to evidence in respect to each individual claimant.

A. Wonderful Solomon

12. The first claimant suffered soft tissue injuries, that is, cut wounds to the head and bruises in the cheeks, knee and elbow. He also had a traumatic injury to the knee so that he has problems walking long distance.

13. Save for the pain that he feels after travelling a long distance the claimant seems perfectly well and healed.

14. I make the following awards:

- i. For pain and suffering – K750,000.00
  - ii. For loss of amenities- K500,000.00
  - iii. For disfigurement – K200,000.00
- The total comes to K1, 450,000.00

B. Ruth Solomon

15. The second claimant had by far the most serious injuries. She had soft tissue injuries in the head and cheeks where she was sutured; the head was swollen immediately after the accident; she also had a fracture of the femur. She was admitted to the hospital (Queen Elizabeth Central) for a month and had several outpatient visits thereafter.

16. In the case of *Geoffrey Amini v William Maulidi and another* (2019) PI Cause number 628 the claimant was awarded K2, 500,000.00, K2, 000,000.00 and K500,000.00 respectively for pain and suffering, loss of amenities and disfigurement respectively. The

claimant, also of a young age had suffered multiple fractures and soft tissue injuries.

17. In this case the claimant suffered one fracture and a few soft tissue injuries. I therefore make the following awards:

- i. For pain and suffering – K2, 000,000.00
  - ii. For loss of amenities- K1, 500, 000.00
  - iii. For disfigurement- K200,000.00
- The total comes to K3, 700, 000.00

C. Veronica Solomon

18. The third claimant suffered soft tissue injuries, i.e. bruises in the elbows, and back of her head. She also had wounds between her legs near her private parts. She is fully recovered. The litigation guardian who testified on the claimants' behalf states that she seems to have been affected mentally: she usually feels tired, does not do household chores as she used to do and generally she has noticed behavioral changes. Unfortunately, she was never taken to a professional who could verify the observation and establish the nexus between the accident and the observed behavioral changes. Nor did she plead injuries to her mental faculties. So we cannot compensate her for those mental effects.

19. Having considered all the relevant facts, I make the following awards:

- a. Damages for pain and suffering – K750, 000.00
- b. Damages for loss of amenities – K500, 000.00
- c. Damages for disfigurement – K200, 000.00

20. The total award therefore comes to K1, 450, 000.00. The sums to be paid within 21 days upon service of the order on the defendants into Court. The Registrar to open trustee accounts for each claimant to be accessed by the claimant's guardian upon proof of a personal need on the part of the claimant.

21. I also award costs of these proceedings.

Delivered this 20th day of June 2022

  
OCM

Chimbizgani Matapa Kacheche  
**Deputy Registrar**